
CIRCULAR ORDERS

ISSUED BY THE

HIGH COURT OF BOMBAY

FOR THE GUIDANCE OF THE

CRIMINAL COURTS

AND

OFFICERS SUBORDINATE TO IT.

1902.

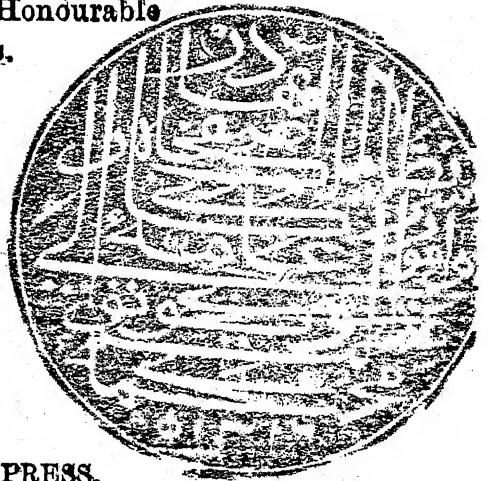
CIRCULAR ORDERS

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H M. HIGH COURT OF JUDICATURE,
APPELLATE SIDE,
BOMBAY,

FOR THE GUIDANCE OF THE CRIMINAL COURTS AND OFFICERS
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Published under the authority of the Honourable
the Chief Justice and Judges.



BOMBAY:

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1902.

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CRIMINAL CIRCULARS.

Prefatory Note— Omitted as unnecessary.

It is proposed, when subsequent circulars are issued, not to issue in form of slips, but as Circulars which can be bound in a file. Many of them are of a temporary nature, and do not require mention in the Circular Book.

Heading— Slightly changed.

CHAPTER I— Paras. 1, 2 and 3 comprise old paras. 1 to 6 in an improved form with modification.

Para. 4. } The last sentence is new.
Old para. 7. }

Para. 5. } A Government Resolution has been added.
Old para. 8. }

CHAPTER II.

Par a. 11. } The "note" is new, and it is proposed to
Old para. 12. } amalgamate clauses (1) and (2) of para
11 (i).

Para. 12. This is new (Government Resolution).

Para. 13. } Wording slightly altered.
Old para. 13. }

Para. 15. } Slightly amplified.
Old para. 15. }

Para. 20. New.

Para. 23. New.

CHAPTER III.

Para. 24. } Slightly amplified.
Old para. 22. }

Para. 27. New.

Para. 31. New.

Para. 33. This is old 36 A compressed.

CHAPTER IV.

Para. 35

(a).

This is the rule which has been hitherto sanctioned for most of the Districts. (Vide *Bombay Government Gazette*, 1901, Part I, page 606).

(b), (c) and (d)

These contain the present rules in a simpler form.

Para. 43.

New (Government Resolution).

Para. 44.

Old para. 38.

The old cumbrous form of diary of proceedings in Sessions Courts has been modified.

Para. 49.

Old para. 42.

The Government Circular has been inserted.

Para. 50.

New (Government Orders).

CHAPTER V.

Para. 53.

Old para. 43 D.

Inserted here from Chapter IV.

Para. 55.

New.

Para. 57.

Old para. 48.

Abridged in accordance with the Criminal Procedure Code.

Para. 64.

Old para. 54.

This will be changed when the new Rules come out.

Paras. 65, 66.

New. They are Government Resolutions.

CHAPTER VI.

Para. 74.

Old para. 60.

A few words added.

Para. 75.

Old para. 61.

Wording slightly altered.

CHAPTER VII.

Para. 82.

Old para. 68.

Slightly altered.

Para. 85.

Was not in the book previously.

Para. 88.

New.

Para. 91.

New.

Para. 93.

Old para. 75.

"or Nazir" added.

CHAPTER VIII.

Para. 97.	}	Last orders of Government substituted.
Old para. 78.		
Paras. 99, 100, 101		New. They are orders of Government.
Para. 104.		New. It is an order of Government.
Para. 108.	}	New. Orders of Government.
Para. 109.		
Para. 110.		
Para. 111.		New. Was not in the old book.

CHAPTER IX. No change.

CHAPTER X.

Para. 115.	}	Wording changed and made applicable to all Courts.
Old para. 86.		
Para. 116.		New. (Order of Government).
Para. 119 (ii).	}	A few words omitted.
Old para. 89 (ii).		
Old para. 91.		Omitted: See Section 548 of the Criminal Procedure Code.
Para. 121.		Government Resolution.

CHAPTER XI.

Para. 123.	}	Wording changed.
Old para. 93.		
Para. 129.	}	New.
Old para. 99.		

CHAPTER XII.

Page 84.	}	Para III. Instructions modified.
Old page 81.		
Page 85.	}	Return amended and instructions modified.
Old page 82.		
Page 88.	}	This form need not be sent through the Sessions Judge.
Old page 85.		
Page 90.	}	Note.
Old page 86.		
		Para 2 is new.

Page 96.
Old page 92.

} Column 16. Amendments are proposed,
} reducing the subjects for remarks.

Page 97.
Old page 93.

} The note on old page 93 has been amended
} and instructions for Presidency Magistrates?
} Return embodied.

Page 103.
Old page 98.

} Return substituted with new instructions.
}

ADDENDA AND CORRIGENDA

The following to be read after Circular No. 5 at page 5.

5 A. Under the present arrangements under-trial prisoners if admitted to a jail are at once examined by the Medical Officer who forwards a certificate of any marks of violence discovered to the District Magistrate. The District Magistrate usually forwards the certificate to the Magistrate dealing with the case who in turn, if he has already committed the case to the Sessions, forwards it on to the Sessions Court. The bare certificate thus often reaches the Sessions Court without any comment or explanation of the facts. It appears desirable that in all cases the result of the Medical Officer's examination should be recorded and a copy be sent with the accused to the Court before which he next appears and that if the Medical Officer's examination discloses marks of violence in regard to which the prisoner makes allegations against the Police or others responsible for his arrest or custody, the District Magistrate should, on receipt of the copy sent to him under orders already existing, arrange for an immediate Magisterial investigation into the complaint through such officer as he may deem most convenient. The result of this investigation, so far as it refutes or establishes the truth of the allegations made, must be communicated as soon as possible to the Court seized of the substantive case.

* * * *

His Excellency in Council * * directs that in all cases the Magistrate, before whom a prisoner may be first brought, whether for confession or otherwise, shall invariably question the prisoner on this point and place on record the questions put and answers given. If any allegation of ill-treatment be made, he shall there and then examine the prisoner's body, if the prisoner consent, to see if there are any marks of injuries as alleged, and shall place on record the result of his examination. If the prisoner refuse to permit such examination the refusal and the reason therefor shall be recorded. If the Magistrate find that there is reason to suspect that the allegation is well founded he shall at once record the complaint, cause the prisoner to be examined by a Medical Officer if possible, and, if he has not

power to take up the necessary enquiry himself, forward him with this record to the Magistrate having jurisdiction to investigate the case. * * * (Vide Government Resolution, Judicial Department, No. 4477 dated 14th July 1902.)

Note.—The instructions contained in lines 8 to 12 of Circular No. 5, page 5, are modified by the above circular.

The following to be read after Circular No. 12 at page 12.

13 A. Legal processes, Civil, Criminal and Revenue, of the Courts of the Bombay Presidency will be executed free of process fees or postage fees by the Courts of the Indore State. (Vide Government Resolution, Judicial Department, No. 4415, dated 10th July 1902.)

The following to be substituted for Circular No. 26 at page 21.

36. By Notification published at page 1117 of Part I of the *Government Gazette* of the 7th November 1895 in supersession of the Notification dated the 5th August 1875, His Excellency the Governor in Council has, under the provisions of Section 269 of the Code of Criminal Procedure, 1882, as amended by Section 9 of Act X of 1886, ordered that the trial by the Court of Session of Poona of all offences for which under Chapter VIII of the Indian Penal Code (*Of offences against the public tranquillity*) or Chapter XI (*Of false evidence and offences against public justice*) or Chapter XII (*Of offences relating to coin and Government stamps*) or Chapter XVI (*Of offences affecting the human body*) or Chapter XVII (*Of offences against property*) or Chapter XVIII (*Of offences relating to documents and to trade or property marks*) or under any of the said Chapters taken in connection with Section 75 of the Indian Penal Code, the punishment awardable is death, transportation for life, or transportation or imprisonment for a period extending to ten years or upwards, and also of all abetments of, or attempts to commit any of the offences above described, shall be by jury in the Poona District; and by Notification published at page 129 of Part I of the *Government Gazette* of the 13th February 1873, that the jury by which such offences are tried shall consist of five persons.

(Vide *Bombay Government Gazette* for 1902, Part I, pages 1422 and 1423).

(c)

The following to be substituted for the 1st paragraph of Circular No. 67 at page 35.

67. Every Criminal Court, when it passes a sentence of imprisonment or transportation, shall specify in the body of the warrant with which, under the provisions of Section 383 of the Code of Criminal Procedure, it forwards the convict to jail, the surname (if any) of the accused in addition to his own and his father's name, and shall endorse on the back of it the following particulars:—

(Vide Bombay Government Gazette for 1902, Part I, page 1778).

The following Rules and Forms, issued and prescribed by the Hon'ble the Chief Justice and Judges of His Majesty's High Court of Judicature, with the sanction of His Excellency the Governor in Council, under Section 15 of 24 and 25 Vic., Cap. 104, for the guidance and use of the Criminal Courts, are published in supersession of those heretofore in force. Certain Government Resolutions regarding Criminal matters are also reprinted for the convenience of the Courts.

CHAPTER I.

ARREST AND INVESTIGATION BY THE POLICE.

1. The following extract from Government Resolution, Judicial Department, No. 1333 of 27th February, 1886, as modified by Erratum No. 3832 dated 13th June 1902, is re-printed for the information and guidance of all Criminal Courts.

(a). Surveillance is one thing, and detention in any kind of custody is another. The law requires that a person who is arrested should be sent to the Magistrate within 24 hours. It is a mere evasion of the law to keep a suspected person in any kind of custody and then by calling such detention 'Nazar Kaid,' to say that he is not under arrest. The system is still more objectionable when applied to witnesses. As the High Court has issued orders on the subject, and the practice is stated to be now systematically discouraged, it is unnecessary for Government to say more on the subject. But both Judges and Magistrates should take severe notice of any instance of this mal-practice which may come under their notice.

(b). The duties of Judicial Officers in regard to confessions are very clearly laid down by the High Court in the recent case of *The Empress vs. Reru Bai and others*. When a confession taken under Section 164 of the Code of Criminal Procedure is retracted before the Committing Magistrate and the Court of Session and an allegation is made of ill-usage by the Police, it is the duty of the Court to inquire very carefully into all the circumstances under which the confession was taken, and particularly as to the length of time during which the accused person was in custody. The Police diaries should be examined and also, if necessary, the reports made by the Police under Section 62 of the Code, and the accuracy of the statements contained in them should be tested by a close examination of the Police Officer by whom the investigation was conducted. The Police Officer in whose custody the accused person was when the confession was made should invariably be sent up with the case.

(c). Any instance of misconduct or abuse of authority by a Police Officer which may come to the notice of the Sessions Court should be reported by the Court to the District Magistrate who, if there is not a sufficiently strong case for the prosecution of the Police Officer, should require the Superintendent of Police to deal with it departmentally, and should report to the Sessions Court the proceedings which have been taken in the matter. If the Sessions Judge is not satisfied, he should call the attention of the Commissioner and the Inspector General of Police to the case, and afterwards, if he still thinks that the misconduct has not been adequately punished, he may bring the matter to the notice of Government.

(d). On the other hand it is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy, or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts, that the smallest irregularity is magnified into a grave offence, and that every allegation of ill-usage is readily accepted as true. That such allegations are sometimes true it is impossible to deny: but the Governor in Council hopes and believes that they are far more often false. When made they must be carefully inquired into: and if it be proved that the Police have manufactured evidence either by extorting confessions or by tutoring witnesses, they can hardly be too severely punished. But His Excellency in Council must most strongly deprecate any over-activity on the part of Judicial Officers to believe anything and everything against the Police. The rejection of testimony on a mere suspicion that it may have been manufactured or of a confession on a mere allegation of ill-treatment, is very unfair to the Police and very prejudicial to the administration of justice.

2. The following directions relating to confessions and statements recorded under Section 164, Criminal Procedure Code, must be carefully attended to:—

(a). The attention of all Magistrates should be particularly drawn to the provisions of Sections 163 and 164 of the Criminal Procedure Code. The first clause of Section 163, taken with Section 24 of the Indian Evidence Act, provides that if a confession is caused by any inducement, threat or promise, offered or made, or caused to be offered or made by any police officer or person in authority in reference to the charge against the accused person, then if in the opinion of the Court the inducement, or threat or promise was sufficient to give the accused person grounds, which would appear to him reasonable, for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him, and unless in the opinion of the

Court the impression caused by any such inducement, threat or promise, has been fully removed, such confession is irrelevant, that is, *it cannot be used as evidence in any criminal proceeding.*

(b). The next point to which the attention of all Magistrates should be drawn is that under clause (2) of Section 163, for a confession of an accused person made in the course of a Police investigation to have any value it must be one which the accused person was disposed to make of his own free will. *Before* recording any such confession the Magistrate is bound to question the accused person, and unless upon that questioning he has *reason to believe* that the confession is voluntary he cannot make the memorandum at the foot of the record. He cannot say "I believe that this confession was voluntarily made," unless he has questioned the accused person, and from that questioning has formed *the belief*—not a doubtful attitude of mind, but a positive belief—that the confession is a statement which the accused person was disposed to make of his own free will.

(c). One important point upon which the Magistrate should invariably question the accused person is as to the length of time during which he (the accused person) has been in the custody of the police. It is not sufficient to note the date and hour recited in the police papers; at which the accused person is said to have been formally arrested.

(d). It is not desirable that any Police Officers should be present when a confession is being recorded under Section 164, except such as may be necessary to secure the safe custody of the accused person when in the Magistrate's opinion, the duty cannot safely be left to other attendants. In any case it is undesirable that the Police Officer making the investigation should be present.

(e). The Magistrate should invariably satisfy himself by questioning the accused and by all means in his power, that the confession is voluntary. He should whenever feasible examine the body of the accused, provided the accused consent to such examination. If there appear grounds for suspecting violence, he should have the accused examined by a Medical Officer if possible.

(f). When recording the confession he should note (1) the date and hour of the commission of the alleged offence, (2) the date and hour of the first detention in custody by the Police, (3) the section of the Code under which the confession is recorded, and, (4) the extent to which the provisions of clauses *a*, *b* and *c* have been complied with.

3. Orders for detention should not be given under Section 167 without good and sufficient cause. Some misapprehension appears to exist as to the limits between a police investigation and a Magisterial enquiry under the Criminal Procedure Code. It is not essential that in every case the police investigation should be completed before the Magisterial enquiry commences. Indeed it may be stated as a general rule that the sooner a Magistrate gets control of a case the better. And if the police are satisfied that a case will eventually have to go before a Magistrate, there is no objection to their sending up the case under section 170 though there may be points on which they may hope to obtain further evidence.

But instances will occur in which the police require more time to determine whether the case should be reported under Section 170 at all; and it is to meet such instances that Section 167 has been enacted. The action which a Magistrate may take under that Section may be of three different kinds :—

(1) he may think no more time should be allowed and therefore direct that the accused persons be forwarded to a Magistrate having jurisdiction; or

(2) he may think that the police require more time, and that that is all they require; in which case he will direct the detention of the accused person in some safe custody other than police custody; or

(3) he may think that the police not only require more time for their investigation but that for some special reason they require to have the accused person present with them in that investigation. In this case the Magistrate must record the reasons upon which his action is based i. e. he must explain to what use he intends the presence of the accused in the hands of the police to be put.

In the two latter cases it will be remembered that the whole period for which successive orders of detention may be made must not exceed 15 days. So that however incomplete an investigation may be, an accused person must in every case be sent to a Magistrate having jurisdiction within a maximum period of 16 days (one day allowed by the law *if so much be necessary*, and 15 more days which may be allowed by a Magistrate on proper cause shown).

Before any order is made under Section 167, the accused person must be present before the Magistrate making the order, and being present the Magistrate will naturally hear any objection he may have to offer to the proposed order.

4. Women accused of any offence, if arrested so soon after child-birth that they cannot at once be taken before the Magistrate without personal suffering and risk to health, should not ordinarily be removed until they are in a proper condition to travel. They should be allowed to remain under proper charge in the care of their relations, or be sent to the nearest dispensary, and suffered to remain there until the officer in charge of the dispensary certifies that they are sufficiently recovered. In such cases sanction must be obtained by the Police from the nearest Magistrate for their detention at their homes, or in the dispensary beyond the period of 24 hours allowed by Section 61 of the Code of Criminal Procedure. The same procedure should be followed in the case of other accused persons who are too ill to travel.

5. The following summary of orders regarding under-trial prisoners whose bodies show marks of beating or violence is published for facility of reference :—

Medical officers in charge of jails are carefully to examine the body of every under-trial prisoner on the day of his arrival in jail, or at latest on the day following, and record, in the under-trial register, whether there are any marks of beating or violence. Where there is any indication of recent violence, a report should be at once made to the District Magistrate, who will forward it to the trying Court—whether Court of Session or Magistrate—which will then, if it seems expedient, summon the Medical officer to give evidence at the trial. (See Government Resolution No. 2947, Judicial Department, of the 20th May 1887, and Inspector Gene-

ral of Prisons' Memoranda No. 3941 of the 23rd July 1885 and No. 1841 of the 1st June 1887). This applies to jails which are in the charge of Medical Officers, not to lock-ups even though such lock-ups may have been declared to be subsidiary jails under the Prisons Act (see Government Resolution, Judicial Department, No. 5120 dated 20th July 1899); but in all suspicious cases an officer in charge of a lock-up may send under-trial prisoners in custody to the nearest medical officer for examination (See Government Resolution No. 646 of the 2nd February 1888, Judicial Department).

6. By Government Resolution in the Judicial Department No. 46 of the 4th January 1888, it is ordered, at the instance of the High Court, that, in order as far as possible to avoid the sending up by the police of persons charged with serious offences for inquiry to Magistrates not empowered to try such cases, every police station be provided with two lists: (1) of the offences cognizable by the different classes of Magistrates, and (2) of the Magistrates in the district and their respective powers,—the list to be corrected from time to time.

7. Warrants issued by Criminal Courts against Railway servants should be entrusted for execution to some Police Officer of superior grade, who shall, if he find on proceeding to execute the warrant that the immediate arrest of the Railway servant would occasion risk or inconvenience, make all arrangements necessary to prevent escape, and apply to the proper quarter to have the accused relieved, deferring arrest until he is relieved. (See Government Resolution, Judicial Department, No. 3987 of 2nd July 1877).

8. When an arrest is made under Section 132 of the Indian Railway Act, IX of 1890, of a person who there is reason to believe will abscond, or whose name and address are unknown and he refuses to give them, or, when given, are reasonably believed to be incorrect, the case should be sent to the Magistrate, in accordance with the provisions of Section 170 of the Code of Criminal Procedure, as a cognizable case within the definition in Section 4(f) of the Code, although the offence alleged against the accused be not itself cognizable. (Vide *Government Gazette*, 1890, Part I p. 145).

CHAPTER II.

PROCESSES AND ATTENDANCE OF PRISONERS AND WITNESSES.

9. *The following Rule made by the High Court of Judicature at Bombay, under Section 20 of the Court Fees' Act (VII of 1870), has been confirmed by the Government of Bombay and sanctioned by the Governor General of India in Council. (Government Gazette, 1875, Part I, page 149).*

The fees chargeable for serving and executing processes issued by the Court of any Magistrate in the case of offences, other than offences for which Police Officers may arrest without a warrant, shall be those shown in the appended table :—

Table.

i. In cases falling within Chapters 19, 20, and 21 of the Indian Penal Code :—

- | | | | | |
|-----|--|-----|-----|----------|
| (1) | For every summons or notice | ... | ... | 4 annas. |
| (2) | For every warrant of arrest | ... | ... | 1 rupee. |
| (3) | For every proclamation for absconding party or witness (Criminal Procedure Code, Sections 87 and 88) | ... | ... | 1 rupee. |
| (4) | For every warrant of attachment | ... | ... | 1 rupee. |

ii. In all other cases, the fee charged for every process shall be one-fourth of the fee shown in the above table.

Provisions.—No fee shall be levied on any process issued upon the complaint of any public officer acting as such public officer.

The Court may remit the process fees, in whole or in part, in cases other than those falling under Chapters 19, 20 and 21 of the Indian Penal Code, whenever the Court is satisfied that the complainant or the accused has not the means of paying them.

Note. (1). Fresh fee is not chargeable in the case of reissue.

Note. (2). Process fees are leviable from Municipalities in respect of summonses and warrants issued in cases falling under Section 84 of Bombay Act VI of 1873, as amended by Section 49 (i) of Act II of 1884. (See G. R., J. D., No. 3528, of 29th June 1892).

10. Summonses issued by Magistrates for service on witnesses living in Bombay should ordinarily be sent to the Chief Presidency Magistrate, and not to the Commissioner of Police, at Bombay, for such service. (Section 73 of the Code of Criminal Procedure).

11. *The following rules for regulating the payment, on the part of Government, of the expenses of complainants and witnesses in cases coming before the Criminal Courts have been made by the Government of Bombay under Section 544 of the Criminal Procedure Code (X of 1882). [Government Gazette, 1884, Part I, pages 204 and 205].*

i.—Payment on the part of Government of the expenses of complainants and witnesses may be ordered:—

- (1) *By Courts of Session* : in any case which comes before such Courts ;
- (2). *By Magistrates*: (a) in every case in which the offence, or any of the offences charged against the accused, is a non-bailable offence ; and (b) in cases in which the offence, or all of the offences charged against the accused is, or are, bailable, only if the prosecution has been instituted or is being carried on by, or under the orders of, or with the sanction of Government, or of any Judge, Magistrate or other public officer, or if the Magistrate thinks that the prosecution is directly in furtherance of the interests of the public service, or that the person to whom payment is to be made is in indigent circumstances :

Provided always that no such payment shall be made to any witness on the part of Government when the expenses of the attendance of such witness have been deposited in Court under Section 216, 244, or 257 of the Code of Criminal Procedure.

Note.—In cases in which the offence is bailable and cognizable, it does not follow because the Police have sent up the case to the Magistrate, that therefore the prosecution has been instituted or is being carried on by or under the orders of or with the sanction of Government or of any Judge, Magistrate or other public officer.

ii.—Payment as aforesaid may be made at the rates specified below, (namely) :—

(a) *In the Mofussil** European and East-Indian witnesses are to be allowed their actual expenses for carriage, when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence, if they demand the same.

(b) European and East-Indian witnesses, coming from the *Mofussil* to attend trials of the *High Court*, are to be remunerated as follows :—

1st Class.—Each person coming under this class to be allowed four annas a mile as travelling expenses for himself and a servant, if a railway be available, and eight annas per mile, if the only means of communication is an ordinary road; five rupees a day as hotel charges while in Bombay; and two rupees for carriage hire for each day he may have to attend the *High Court*.

2nd Class.—Persons under this class to have their actual travelling expenses, three rupees a day as board expenses in Bombay, and one rupee conveyance hire for each day of attendance at the *High Court*.

3rd Class.—Persons of this class to have their actual travelling expenses, and one rupee eight annas a day as boarding allowance.

Note.—The Magistrate or other authority who sends a witness to the *High Court* shall determine to which of the above classes he belongs.

* Any place outside the limits of the Town of Bombay, but within the Presidency of Bombay, or any place outside the local limits of the ordinary original civil jurisdiction of the *High Court* at Bombay, but within the Presidency of Bombay.

- (c) As a general rule, native witnesses of the better class, as Patels, Pandharpeshas, Merchants, Vakils, and persons of corresponding rank, as well as all witnesses who are in no way concerned in the case in which their evidence is given, but whose evidence is required for furthering the ends of justice, (such as attesting witnesses to depositions and inquest-reports, provided they can read and write), are to be allowed six annas a day as subsistence-money, and they are also to receive railway and other travelling expenses that have been actually incurred by them, provided the same be reasonable.
- (d) Native witnesses of the class of cultivators and menials, who would not under ordinary circumstances voluntarily incur any expense on account of special lodging when away from home are to be allowed subsistence-money at the rate of four annas a day, and are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable.

iii. Peculiar cases, that is cases not coming under the operation of clauses (a), (b), (c), and (d) of Rule ii, are to be dealt with according to their own merits, and at the discretion of the Court from which subsistence or travelling allowance is demanded.

iv. When a witness lives in the same town or village in which the Court, before which he is required to give evidence, is situated, the Court may award him such sum, not exceeding four annas a day, as may compensate him for any loss he may have incurred by attendance upon the Court.

12. The following are the rules for the payment of accused persons when released on discharge or acquittal and regarding the payment of expenses to complainants and witnesses. (Vide G. R., No. 7894, J. D., dated 14th December 1898).

i. Subject to conditions hereinafter contained, every Sessions Judge, Assistant Sessions Judge, District Magistrate, Divisional Magistrate, and First Class Magistrate and every Second Class Magistrate who is also an Assistant or Deputy Collector, may, on recording his reasons in writing, give from funds supplied for the purpose on the part of Government to any accused

person acquitted or discharged by him money for his railway fare, steamer fare, or daily expenses.

The conditions hereinbefore referred to are :—

- (a) That the Court is satisfied that the accused on his discharge or acquittal will be under the necessity of proceeding to some place not less than fifteen miles distant from the Court.
- (b) That the accused is unprovided with means sufficient for the expenses of his journey to such place and his maintenance on such journey.
- (c) That the amount given on account of daily expenses shall not exceed the rate of two annas a day for the number of days which, in the opinion of the Court, will necessarily be occupied in such journey.
- (d) That if a portion of the journey can be made by railway or steam boat, a ticket of the lowest class shall be given in addition to the sum allowed for daily expenses.

ii. Any Court may refuse the payment on the part of Government of expenses—

- (a) To any complainant whose complaint has been declared to be false or frivolous, and
- (b) to any witness whose evidence it does not consider to be substantially true.

13. In forwarding an application or summons for the attendance of a witness residing in a Native State, care should be taken to give such a description of him that he may be easily identified. Thus, for instance, besides the person's name and father's name the requisition should indicate his age, caste, and village, and it should be mentioned if his village is in the neighbourhood of any well-known town.

In the case of persons residing in the territories of His Highness the Nizam, the district, village and mohalla (locality) should be mentioned.

ii. The probable time during which the witness will be detained should also be stated ; and, in fixing the date when the

appearance of a witness is required, reasonable time should be given, so as to allow of his being found and sent off.

iii. When practicable, the batta allowed by Government orders for the expenses of witnesses should be transmitted at the time of sending the requisition.

iv. Officers should (when it is possible) avoid summoning such witnesses for the preliminary inquiry before the Magistrate in those cases where their evidence, though necessary before the Sessions Court, is not indispensable for the purpose of commitment.

14. Processes sent for service at any place where the language is different from that of the Court issuing them, should be accompanied by translations in the language of such place or in English.

15. Summonses issued under the Code of Criminal Procedure by Courts of Session, District Magistrates and First Class Magistrates may be signed and sealed by the Clerk of the Court or, where there is no Clerk of the Court, by the Sheristedar or the Clerk or Karkun performing the duties of Sheristedar, subject to the orders of the presiding officers of the Court.

Summonses issued by the Court of any Presidency Magistrate may be signed and sealed by the Officer for the time being performing the duties of Judicial Clerk in such Court. (*Vide Government Gazette* for 1900, Pt. I, p. 1444).

16. In the case of First and Second Class Sardars and other Native gentlemen of high position, a letter signed by the Judge or Magistrate, and to the same effect as Form I or XXXI, Schedule V, Criminal Procedure Code, may be substituted for the ordinary summons.

17. Courts summoning medical officers as witnesses should be careful to name such a date for attendance as will enable the officer summoned to attend in time. Whenever the attendance as a witness of a medical officer in charge of a dispensary is likely to entail a prolonged absence from his duties, the Court summoning the witness should make a communication to the Civil Surgeon in order that that officer may, if possible, make arrangements for carrying on the duties of the witness during his absence.

18. In summoning Revenue Officers of any description, due consideration shall be had to the loss and inconvenience the public service may suffer from the absence of those functionaries from their duties. When their evidence is required, they shall be detained for as short a period as possible, and their personal attendance shall be dispensed with, whenever it can be, consistently with the requirements of justice.

19. Warrants of arrest should be made returnable on execution, or alternatively after a given time, *e. g.*, six months. In the latter case they should be accompanied on return by a police report as to whether the accused has been heard of, and is likely to come within reach. After re-issue for a certain number of times, the warrant thus returned should be put on a dormant file—in capital cases after seven years; in cases subject to transportation or imprisonment for not less than seven years, after three years; in less important cases, after a year. In the event of information reaching the Magistrate that the accused has been seen in the district, or where he could be arrested, the warrant should be re-issued at the Magistrate's discretion.

20. Notices calling upon accused persons to show cause why they should not be retried or committed to the Court of Session, or why a sentence should not be enhanced, or why imprisonment should not be awarded in addition to or in lieu of a mere sentence of fine, and notices calling upon persons to show cause why they should not execute a bond for good behaviour or for keeping the peace, and other notices of a like nature should be returned served as soon as possible. If service cannot be effected for a period of four months after receipt of the notice, it should be returned accompanied by a Police report stating in detail the efforts used for effecting service and why such efforts failed and whether the accused is or is not likely to come within reach. The notice will then be re-issued three times in all and fresh efforts will be made for serving it. If such a notice is ultimately returned unserved it shall be put on the dormant file in cases of offences punishable with imprisonment for a period exceeding seven years after the expiry of three years from the date of the original notice and after eighteen

months in less important cases. Such notice should be immediately re-issued as soon as intimation is received that there is likelihood of service being effected.

21. Whenever it may be found necessary to proceed, under Section 37 of Regulation XII of 1827, against a community, a notice shall be issued to the village informing them of the course about to be taken.

This notice shall be sent by a peon, with directions to have it fixed up in the village *chavdi*. It shall inform the villagers of the charge against them, and require them, within a certain number of days (which shall never be less than eight), to appoint some parties on their behalf to appear before the Magistrate and answer the charge of connivance or neglect, as the case may be.

The Police Patel must always be one of the village deputation to be arraigned, and a copy of the notice shall be invariably entered on the proceedings of the trial.

22. His Excellency the Governor in Council authorizes the conveyance of all witnesses and prisoners in criminal cases by rail at the expense of Government, wherever there may be a railway available.

23. A Court, applying to the High Court for the removal of a prisoner from jail under Section 39 of Prisoners' Act III of 1900, should state that it has satisfied itself that the evidence of the prisoner is necessary for the ends of justice. The date, the hour and the place where the attendance of the prisoner is required should also be stated, as well as the number of miles the prison, in which the prisoner is confined, is situate from the place where he is sought to be removed.

ENQUIRY AND TRIAL BY MAGISTRATES.

24. Care should be taken by the Magistrate, in conducting the examination of a complainant under Section 200 of the Code of Criminal Procedure, to make the enquiry sufficiently full to enable him to judge whether there are any grounds for proceeding. Before directing a previous investigation under Section 202, Criminal Procedure Code, the Magistrate must record his reasons for distrusting the truth of the complaint. Similarly he must record his reasons for dismissing a complaint under Section 203.

25. The following form of proceedings, to be kept in English (as well as in the vernacular) when the Magistrate is acquainted with English, is to be used in the enquiry into cases triable by the Court of Session (Chap. XVIII of the Code of Criminal Procedure). It is meant only as a guide and is not intended to be exhaustive.

A similar form of proceedings will apply, *mutatis mutandis*, to trials under Chapter XXI (Warrant Cases).

In every case the proceedings should be commenced on the first day on which the accused person is brought or appears before the Magistrate, and if for any reason the enquiry or trial is not at once proceeded with, the order in writing should be signed by the Magistrate at the time with his own hand in these proceedings. (Section 344).

Form of Proceedings.

Case No. _____ of _____
Criminal Court of _____ (name).
Magistrate _____ at _____
(date)

The following person (age, caste, occupation and residence &c.) is before the Court accused of offence (state briefly the offence or offences, and enter whether in custody or on bail, and if in custody from what date each accused person has been in custody).

[*Note. If the accused is allowed to appear by a pleader (Section 205), this will be shown in the heading and the Magistrate will briefly record his reasons for permitting this course*].

Property before the Court (if many items, enter as per list). Exhibit No.

Pleaders' names (if any)

* Deposition of C. D. No.

Deposition of E. F. No.

&c.

Adjourned till

(insert briefly the reason for the adjournment, Section 344).

X. Y.

Magistrate.

(Camp).

Date.

Resumed (date and place).

Deposition of L. M. No.

Deposition of N. O. No.

&c.

Examination of accused (name). No.

Examination of Defence witnesses (if any).

Deposition of P. Q. No.

&c.

Charge No.

List of witnesses for the defence (if any) No.

Reasons for, and order of, commitment No.

X. Y.

Magistrate.

(Camp).

Date

* From here the entries should be made by the Magistrate with his own hand at the time in the English proceedings.

[*Note.*—The order to the Public Prosecutor (Section 218) and the recognizances of witnesses (Section 217) and the warrant for commitment (Section 385) should be shown in the vernacular proceedings.

When any property is sent to the Nazir of the Sessions Court, it should be sealed in a bundle or bundles and labelled with the number of the case, and a list should accompany showing each item and its identifying mark, a corresponding mark being attached to each item.

If the accused is charged with a bailable offence, and is able to give bail, the proceedings will show that he appears on bail instead of in custody, and instead of referring to the warrant of commitment, the proceedings will shew that he was ordered to be released on giving bail for his appearance before the Court of Session, and will state the number and amount of the securities required.]

26. A Magistrate requiring the production in evidence of documents recorded in a Court of Justice, or in the custody of any public officer, shall, in his communication to such Court or officer, state clearly whether he requires the entire record or any particular paper or papers; also at what time and place the papers, if not previously sent by post, must be produced; and whether any subordinate officer will be required to attend for the purpose of proving them. The communication shall be signed and sealed in the same way as a summons.

As a rule, it is not desirable that a Magistrate should send for original papers in cases in which copies will serve the purpose, and in which the person requiring the production of the papers is in a position to obtain certified copies.

27. The attention of Magistrates is called to the provisions of Section 256, Criminal Procedure Code, and to the necessity of asking the accused person, when a charge has been framed, whether he wishes any witness to be re-called for cross-examination.

To avoid the needless harassment of witnesses by detention for cross-examination after the charge has been framed, Magis-

trates will usually find it convenient not to wait for the completion of the evidence for the prosecution, but to frame the charge as permitted by Section 254 at an earlier stage, as soon as from the examination of the prosecutor or complainant or otherwise it is apparent that there is a *prima facie* case.

28. The attention of Magistrates is called to Section 509 of the Code of Criminal Procedure, and they are informed that a committing Magistrate should not, except for some special reason, bind over a medical witness, whose evidence he has taken, to appear in the Sessions Court. It is very undesirable that medical men in the districts should be taken away from their dispensaries more frequently, or for a longer period, than is absolutely necessary.

29. Section 509 of the Code of Criminal Procedure requires that the deposition of a medical witness should be not only taken, but also attested in the presence of the accused by the Magistrate, in order to render it admissible in other proceedings. An attestation in the following form should therefore always be appended to such depositions; namely,

“Taken before me and signed by me in the presence of the accused.

Date.

(Signature of Magistrate.)”

30. Whenever a Magistrate, acting under Section 469 of the Code of Criminal Procedure, shall send for trial before the Court of Session an accused person regarding whose sanity at the time of committing the offence he entertains any doubt, he shall at the same time inform the jail authorities of the supposed state of the accused, in order that he may be placed under careful surveillance prior to his trial before the Court of Session.

31. A Court acting under Section 123 of the Code of Criminal Procedure cannot legally award a sentence of imprisonment in anticipation of default to furnish the requisite security.

32. Every Magistrate on receiving or resuming charge of his office should enquire what accused persons are in detention under the orders of his Court, with a view to their being brought before him within the period limited by law (see Section 344 of the Code of Criminal Procedure.)

33. Magistrates should remember that priority should as a rule be given to Criminal work over other work, and that every effort should be made to reduce as far as possible the hardship to parties and witnesses which the proceedings entail. The hearing of a case should usually go on from day to day excepting Sundays and authorized holidays. Adjournments when necessary should be as short as the circumstances will permit. The Magistrate should always sit punctually at the appointed hour so as not to keep people waiting, and when on tour should take the utmost care to let parties and witnesses know the place and hour fixed for their appearance, and do everything in his power to avoid putting them to any unnecessary inconvenience.

34. In all important cases under inquiry or trial before a Magistrate where a just appreciation of the evidence requires some knowledge of the scene of the alleged offence, the Magistrate should, if possible, personally visit the scene either before or during the inquiry or trial, so that he may the more readily understand the statements of witnesses.

CHAPTER IV.

TRIALS BY COURTS OF SESSION.

35. The following rules have been framed to regulate the holding of Criminal Sessions :—

(a). Whenever a Magistrate in the course of enquiry into a case thinks it likely that he will commit it for trial by the Court of Session, he shall send intimation to the Sessions Judge naming the offence, or offences, with which the accused person or persons will be charged, the number of probable witnesses, and the locality from which they come and the probable date by which the case will be ready for trial. The Sessions Judge will then, with due regard to the convenience of the witnesses in the case and other cases pending or to be tried in his Court, fix the earliest day possible for which the commitment should be made and forthwith inform the committing Magistrate of the date so fixed. Such day may be in the ordinary monthly Sessions or at a special Sessions for which due arrangements should be made. If a Magistrate discharges or determines himself to try the accused person, or persons, in any case so reported, he should immediately intimate the fact to the Sessions Judge.

(b). Subject to any special orders of the High Court the ordinary monthly Sessions shall be held at the Sadar Station of each Sessions Judge and Additional Sessions Judge, commencing on the first Monday of each month or if that day is a holiday on the next Court day.

(c). Subject as aforesaid Sessions shall be held at the following stations whenever there is no resident Additional Sessions Judge, as follows :—

At Alibag commencing on the third Monday in February, April and November.

At Broach commencing on the second Wednesday after the commencement of the Surat Sessions.

At Bijapur commencing on the third Monday of each month.

At Nadiad commencing on the second Monday of each month.

At Sirsi or Haliyal four times a year in the months of January, April, May or June, and September or October commencing on dates to be fixed from time to time by the Sessions Judge.

Provided that when the day above appointed is a holiday, the Sessions shall begin on the next Court day.

(d). Cases committed in the Districts of Kolaba, Broach, Bijapur, Kaira and the Panch Mahals, and in the Talukas of Sirsi, Siddapur, Supa and Yelapur in the District of Kanara, shall be tried respectively at Alibag, Broach, Bijapur, Nadiad, Sirsi or Haliyal, unless the Sessions Judge for sufficient cause orders the transfer of any case or cases to his own Sadar Station.

36. By Notification published at page 798 of Part I of the *Government Gazette* of the 12th August 1875, His Excellency the Governor in Council has ordered that the trial by the Court of Session of Poona of all offences for which under Chapter VIII of the Indian Penal Code (*Of offences against the public tranquility*) or Chapter XI (*Of false evidence and offences against public justice*), or Chapter XII (*Of offences relating to coin and Government stamps*), or Chapter XVI (*Of offences affecting the human body*) or Chapter XVII (*Of offences against property*) or Chapter XVIII (*Of offences relating to documents and to trade or property marks*), or under any of the said Chapters taken in connection with Section 75 of the Indian Penal Code, the punishment awardable is death, transportation for life, or transportation or imprisonment for a period extending to ten years or upwards, and also of all abetments of, or attempts to commit, any of the offences above described, shall be by jury in the Poona District; and that any person who may be tried by jury for any of the offences specified above shall be tried by the same jury for all offences with which he may be charged on the same trial, and by Notification published at page 129 of Part I of the *Government Gazette* of the 13th February 1873, that the jury by which such offence are tried shall consist of five persons.

37. By Notification No. 6638 published at page 708 of Part I of the *Government Gazette* of the 25th September 1884, amended by Notification No. 3003 published at page 544 of Part I of the *Government Gazette* of the 30th April 1885, His Excellency the Governor in Council has ordered that, in the Ahmedabad District, the trial before any Court of Session of all offences punishable with death shall be by jury, and by Notification No. 7015, published at page 744 of Part I of the *Government Gazette* of the 9th October 1884, that the jury by which such offences are tried shall consist of five persons.

38. By Notification No. 6638, published at page 708 of Part I of the *Government Gazette* of the 25th September 1884, His Excellency the Governor in Council has ordered that in the Surat and Belgaum Districts the trial before any Court of Session of all offences punishable with death, transportation for life, or imprisonment for ten years shall be by jury, and by Notification No. 7015, published at page 744 of Part I of the *Government Gazette* of the 9th October 1884, that the jury by which such offences are tried shall consist of five persons.

39. By Notification No. 8555, published at page 1148 of Part I of the *Government Gazette* of the 10th December 1884, amended by Notification No. 1535 published at page 290 of Part I of the *Government Gazette* of the 5th March 1885, His Excellency the Governor in Council has ordered that in the Thana District the trial before any Court of Session of all offences punishable with death, transportation for life, or imprisonment for ten years shall be by jury ; and by Government Resolution, Judicial Department, No. 2908 of the 14th May 1886, that the jury by which such offences are tried shall consist of five persons.

40. The Honourable the Chief Justice and Judges, under the authority of Section 15 of Statute 24 and 25 Vic., Cap. 104, and Section 276 of the Code of Criminal Procedure, 1882, have framed the following rules for the selection of jurors in the Courts of Session :—

(1) The list of jurors shall be prepared, published and revised in the manner laid down in Sections 321, 322, 323 and 324 of the Code of Criminal Procedure in the month of January of each year or as soon thereafter as may be convenient.

(2) No one shall be included in the jury list who does not possess a knowledge of the English language: Provided that if a sufficient number of persons acquainted with English cannot be obtained, the jury list may be completed by the addition of the necessary number of persons not acquainted with English.

(3) A week before the commencement of the Sessions, folded papers bearing the names of the jurors in the list aforesaid shall be put into a ballot-box, and as many of them as the Sessions Judge may deem necessary shall be drawn by lot in open Court. The names of such persons as have served within six months of the date of the commencement of the Sessions are to be excluded from the ballot.

(4) When the number of jurors required to serve is found insufficient, the names of the persons who have served within six months of the commencement of the Sessions shall be drawn as above directed so far as may be necessary to complete the required number.

(5) A precept shall then be addressed to the District Magistrate requiring him to summon the jurors so drawn to attend on the day the Sessions commence.

(6) At the commencement of the Sessions the names of the jurors summoned to attend shall be put into the ballot-box, and as many of them as the Court may think necessary shall be drawn to sit as jurors for the trial of the case coming on first.

(7) The rest of the jurors summoned shall be asked to attend at such time as the Court may specify, and the requisite number shall be selected from amongst them at the beginning of each case or day, in the manner above specified, to serve as jurors in the case or cases standing for trial.

(8) It shall be in the discretion of the Court to excuse the attendance of any person whose name has been drawn, either before or after he is summoned, and to direct another name to be drawn.

(9) When the name of a Government servant who is absent on duty is drawn, such servant shall ordinarily be deemed not available, and it shall be within the discretion of the Court to direct that he shall not be summoned or, if already summoned, to excuse his attendance.

(10) The power of choosing jurors from amongst persons present in Court shall be exercised by the Judge, or by such person as the Judge may appoint for that purpose under the superintendence of the Judge.

41. The same rules, *mutatis mutandis*, shall be followed in the selection of Assessors in the Courts of Session.

42. It is very desirable to maintain the position of Assessors and Jurors in public estimation and to make their duties as little irksome as possible. No Assessor should be summoned too frequently. When Assessors or Jurors are summoned, the notice should be sent to them in a regular and formal manner, and they should be treated with consideration and respect. A proper place should be provided for them to wait in when their presence in Court is not necessary.

43. Government have ruled (G. R., J. D., No. 8229 dated 12th December 1898) that the reasonable expenses payable to Jurors and Assessors under G. R. No. 6049 dated 13th October 1887, should not in the case of a Government servant exceed the amount which would be admissible to him for a similar journey on duty under Chapter XLVII of the Civil Service Regulations.

44. (i). In all cases tried by Sessions Courts the diary of proceedings should be written at the time and kept in English, *mutatis mutandis* in the form prescribed for Magisterial proceedings (pages 15, 16, 17).

(ii). The documents recorded should, as a rule, be numbered and arranged, with the other papers, in the order in which they are recorded. At times, it will be inconvenient to do this, and in such cases they should be placed separately by themselves, the bundle composed of them being accompanied by a list showing the name or nature of each document, with its number both in the case and in the bundle.

45. (a). Whenever a confession recorded under Section 164 of the Code of Criminal Procedure and written in the vernacular is used as evidence in a trial before a Court of Session, a translation of it should be made and filed with the memorandum made by the

Judge of the evidence taken by him under Section 356, and should form part of the record. (Vide *Government Gazette* for 1891, Part I, p. 716).

(b). Ordinarily every vernacular document, or important part thereof, exhibited as evidence, should be translated and the translation recorded in its proper position in the English proceedings. (Vide *Bombay Government Gazette* for 1891, Part I, page 515.)

46. When death or grievous hurt has been caused by a blow from a stick or other weapon, the weight and dimensions of the weapon should be stated in the Sessions Court proceedings, with such particularity as may enable the High Court (which has no opportunity of seeing it) to form an opinion as to the character of the weapon and the intention with which it was probably used. The mere entry of "a stick" or "a stone" in the list of property produced before the Sessions Court does not enable the High Court to judge whether the stick or the stone was a deadly or a comparatively harmless weapon.

47. At the conclusion of every trial the Court of Sessions shall send to the committing Magistrate or District Magistrate, should either of them require it, a copy of the judgment or of the heads of the charge to the jury.

48. Every Sessions Judge, Additional Sessions Judge, and Assistant Sessions Judge should wear a King's Counsel's gown made of black silk with Barrister's bands.

49. Sessions Judges should during the annual adjournment for six weeks of the District Court, as at other times, arrange for receiving all appeals and applications in criminal cases and should, when there is business to be disposed of, sit to dispose of it at least one day in the week.

The following is Government Circular No. 3233, Judicial Department, dated 29th May 1893 :—

It has been proposed that Sessions Judges might be permitted to absent themselves from their Districts during the vacation allowed to Civil Courts therein in cases in which with due regard to the proper and prompt disposal of criminal work it may be possible to appoint as Additional Sessions Judges such Judges of neighbouring Districts as may be willing and able to undertake during such vacation the criminal work of both Districts.

2. His Excellency the Governor in Council is pleased to intimate his approval of the above proposals subject to the following conditions :—

Government must in each such case, not less than three weeks before the commencement of such vacation, be satisfied

- (i). That the Court of the Sessions Judge, who, it is proposed, should be appointed Additional Sessions Judge, is accessible within twenty-four hours from the Court of the Sessions Judge who wishes to absent himself ;
- (ii). That the Sessions Judge so proposed as Additional Sessions Judge is willing to undertake, in addition to the work of his own Court, the criminal work in the District of the Sessions Judge who wishes to absent himself ;
- (iii). That the arrangement proposed will entail no undue delay in the disposal of the civil or criminal work in either District ;
- (iv). That the arrangement proposed is to entail no additional expense to Government either on account of travelling allowance, deputation allowance or any other charge on the public revenues.

The above conditions having been satisfied, an Additional Sessions Judge will ordinarily be appointed, under Section 9 of the Code of Criminal Procedure, 1882, to exercise during such vacation jurisdiction in the Court of the Sessions Judge who wishes to absent himself, and under Section 193 of the same Code, be directed to try all cases committed and hear all appeals presented to such Court during that period.

50. The following orders have been issued in regard to pleaders being appointed for the defence in murder cases :—

In every murder case tried in a Court of Sessions in which the accused person is unable to pay for legal advice, and in every case before the High Court, in which a sentence of death is referred for confirmation, and the convict is unrepresented, a pleader shall be requested by the Court to undertake the defence, and his remuneration shall be paid by Government. (Bombay Government Resolution, J. D., No 7325, dated 21st October, 1884).

The services of a pleader should be made available in the High Court in the cases in which a sentence is sought on revision to be enhanced to a sentence of death. (Bombay Government Resolution, J. D., No. 1795, dated 2nd April, 1889).

A pleader should not ordinarily be appointed by the Sessions Court if the Committing Magistrate certifies that the accused person is able to pay for legal advice, nor if the accused has been defended by a pleader in the Magistrate's Court. It is desirable that the pleader should always be appointed in sufficient time to

enable him to take copies of the depositions (which should be furnished free of costs and paid for in the same manner as copies supplied to the Public Prosecutor) before the commencement of trial. If the accused plead guilty, or if at the last moment he appoints another pleader, the pleader appointed by the Court should still be allowed his fee for the day. In the latter case the copies already prepared will be available on payment for the use of the pleader appointed by the accused. (Bombay Government Resolution, J. D., No. 7979, dated 17th November, 1884).

In cases tried before Sessions Judges in the Mofussil payment of the fees is made by the Treasury Officer to the District Judge on a certificate being furnished with the bill that the pleader was engaged with the authority of the presiding Judge. The counter signature of the legal Remembrancer on such bills is unnecessary. (Bombay Government Resolutions, J. D., No. 8246 dated 26th November, 1884, and No. 2327 dated 30th March, 1885).

In those Sessions Courts in which the District Public Prosecutors have an establishment of one or more copyists under them, the copies required by the pleader for the defence should be prepared by those copyists under the orders of the District Public Prosecutors. If in urgent cases this is found impossible, the District Public Prosecutor is authorized to employ temporarily an extra copyist, or, if that is not possible, to obtain the necessary copies from the Courts' Sectioners, and in each instance the District Public Prosecutor should report the circumstances and the cause of emergency to the Remembrancer of Legal Affairs. In the case of District Public Prosecutors who have no copying Clerks under them, the copies needed for the pleader for the defence must be obtained by the Public Prosecutors in the same way that they obtain copies for themselves, namely, through the Court's Sectioners, and they should charge for such copies in their monthly bills, which are sent to the Remembrancer of Legal Affairs for countersignature. In small cases the District Government Pleader might often be able to save the expense of a double set of copies by allowing the pleader for the accused the use of his own copies. (Bombay Government Resolution, J. D., No. 9030 dated 24th December, 1884).

The fees chargeable under the Court Fees' Act VII of 1870 on the copies have been remitted by the Government of India. (Bombay Government Resolution, J. D., No. 423 dated 16th January, 1885).

The fee payable to the pleader for the defence is Rs. 10 a day with power to the Legal Remembrancer on the recommendation of the Sessions Judge to increase it to Rs. 25. An increased fee will probably, as a rule, be given to the pleader in those cases in which it is allowed to the public prosecutor; for "unusual importance or difficulty" in a case will generally entail extra labour on the pleaders of both sides. (Bombay Government Resolution, J. D., No. 2325 dated 30th March, 1885).

When a pleader is not appointed in murder cases, in which the accused is unable to pay for legal advice and is unrepresented, the reason for not appointing a pleader should be stated in the record. (High Court Circular No. 511 dated 15th March, 1898).

CHAPTER V.

GENERAL RULES AS TO INQUIRIES AND TRIALS IN ALL COURTS.

51. All Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges and Magistrates shall, in the examination of complainant's witnesses and accused persons, record, in each deposition, statement, or defence the following particulars, which are indispensably necessary for the future identification of the parties examined, *viz.*, the name of the person examined, the name of his or her father, and, if a married woman, the name of her husband, the race, religion or caste and profession and age of the party or witness and the village and district in which he or she resides.

52. The following form of deposition should be used by all Courts in recording the evidence of witnesses. It is not enough to say that a "witness deposes as the last did." The deposition of each witness must be taken down separately, and every deposition should be commenced on a separate page, or half page.

Form of deposition to be used by all Courts.

I, having made oath (or solemn affirmation, as the case may be) state—

My name is _____, my father's name
is _____, (or in the case of a married woman
my husband's name is _____).

My age is _____ I am by race, religion or
caste, as the case may be,

* As to the proper way of filling these blanks
see the instructions given at page 91 below for
filling up columns 4 and 5 of the Monthly Criminal Returns.

a* _____, by occupation
a* _____, and I reside
in the village of

_____, Taluka _____,
and District _____.

N. B.—If the witness cannot tell his or her age, the Magistrate should state how old he or she appears to be.

(If the witness is a European, or Native Christian with a European name, his full name will be entered, and the part as to his father's name will be left blank.)

Examination-in-Chief.

I know accused, &c., (or as the case may be).

Cross-examined by accused.

I &c. (or as the case may be).

Re-examined.

I &c. (or as the case may be).

To the Court.

I &c. (or as the case may be).

Dated this day of

X. Y.

(If the accused declines to cross-examine, it should be so stated).

Sessions Judges and Magistrates should write the memorandum of the substance of the deposition of each witness in a legible hand, leaving a quarter margin to the left on the obverse and to the right on the reverse, so that the record may be bound.

It is to be understood that the Vernacular deposition, and the memorandum of the substance thereof in the handwriting of the Sessions Judge or Magistrate, should bear the same number. There should not be a separate series for depositions; all the Exhibits, including depositions, should be in one series.

53. Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges and First Class Magistrates may use a typewriter, instead of a pen, for the purpose of recording judgments, depositions and memoranda of evidence, but every sheet of any judgment, deposition or memorandum so recorded must be signed by the Sessions Judge, Additional Sessions Judge, Assistant Sessions Judge or First Class Magistrate recording it. (*Vide Government Gazette for 1899, Part I, page 1920*).

54. When the evidence of an officer connected with the Mint or the Currency Department is required as to the genuineness or spuriousness of a coin or currency note, the Courts and Magistrates are recommended to send the coin or note to the Mint Master, or to the Commissioner of Paper Currency, Bombay, as the case may be, under cover of their Court-seal or by a messenger whose evidence can afterwards be taken and, at the same time, to issue a commission for the examination of such officer as a witness under the provisions of Section 503 of the Code of Criminal Procedure. This

will prevent the great inconvenience of officers being called away from their duties on mere ordinary occasions. In special cases a careful discretion is to be exercised, regard being had to the considerations above stated.

55. In murder cases the constable or other person, who took the corpse to the Medical Officer for *post mortem* examination, should always be sent to the Sessions Court as a witness.

56. Under the provisions of Section 7 of Act X of 1873, the Honourable the Chief Justice and Judges are pleased to direct that in all Courts, subordinate to the High Court, Parsi witnesses shall be sworn on the Zendavesta by an officer of the Court in the manner and according to the form hereinafter given.

The witness (placing his right hand on the open book and with his shoes on his feet) shall repeat after the officer the following words (or their equivalent in his own language):—"I swear in the presence of Almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth." He shall also repeat the words "Manasni, Gavasni, Kunasni."

57. In all important Criminal cases, and especially in cases of murder and dacoity, it is desirable that the Police Officer by whom the investigation was conducted should be in readiness to be examined, if necessary, as a witness in regard to the circumstances of the investigation. The Police Officer should bring with him his diary of the case and also the memorandum of the statements of the witnesses taken down by him under Section 161 of the Code of Criminal Procedure.

58. CIRCULAR ORDERS REGARDING PERSONS OF RANK AND POSITION, TO BE OBSERVED IN ALL CRIMINAL COURTS.

i. When a First Class Sardar or any Native gentleman, who by Government Notification No. 2661 of 14th April 1888, published in the *Bombay Government Gazette* of 19th April 1888, Part I, or by any similar Notification which may, from time to time, be published by Government, ranks as a First Class Sardar, has to attend any Court, he should be provided with a chair on the raised platform on which the presiding officer of the Court sits, and should give his evidence sitting.

ii. When a Second or Third Class Sardar or any Native gentleman, who by Government Notification No. 2661 of 14th April 1888, published in the *Bombay Government Gazette* of 19th April 1888, Part I, or by any similar Notification which may, from time to time, be published by Government, ranks as a Second or Third Class Sardar, has to attend any Court, he should be provided with a chair in some convenient place in the Court, below the raised platform on which the presiding officer of the Court sits and should give his evidence sitting.

59. All Sardars or Native gentlemen of similar rank should stand while the affirmation or oath is being administered to them and resume their seats immediately after.

60. The following rules regarding the wearing of shoes are to be observed in all Courts of Justice in the Bombay Presidency :—

- (a) All Natives of India attending Courts of Justice will be at liberty to conform, at their option, either to Native or to European custom.
- (b) If they prefer the Native custom and wear Native shoes they will be required to leave their shoes before stepping on the carpet, or before being sworn. If they adopt the European custom and wear European shoes, they will wear them in Court.
- (c) Parsis should be always allowed to keep their shoes on when in the act of taking an oath.

61. The following instructions for the dress of officers and soldiers appearing before a Criminal Court (other than a Court established under military law) have been approved by the Governor-General in Council. (See Government Resolution in the Military Department No. 1686 dated the 29th August 1891)—

(1). An officer or soldier required to attend a Court in his official capacity should appear in uniform, with sword or side-arms. Attendance in an official capacity includes attendance—

(a)—as witness, when evidence has to be given of matters which came under the cognisance of the officer or soldier in his military capacity ;

(b)—by an officer for the purpose of watching a case on behalf of a soldier or soldiers under his command.

(2). An officer or soldier required to attend a Court otherwise than in his official capacity may appear either in plain clothes or uniform.

(3). An officer or soldier shall not wear his sword or side-arms if he appears in the character of an accused person, or under military arrest, or if the presiding officer of the Court thinks it necessary to require the surrender of his arms, in which case a statement of the reasons for making the order shall be recorded by the presiding officer, and, if the military authorities so request, forwarded for the information of His Excellency the Commander-in-Chief.

(4). Fire-arms shall under no circumstances be taken into Court. (*Vide Government Gazette* for 1891, Part I. page 1044).

62. The following Circular is re-published for information and guidance :—

“TO THE JUDGES.

“It having been brought to the notice of the Sadar Divani Adalat that a practice very generally prevails of excluding from the Court-room all those classes of the community who come under the denomination of outcasts, whether appearing as parties to, or witnesses in, a suit under trial, I have the honour, by direction of the Judges, with the concurrence of Government, to remark that they much disapprove of the course, as one at variance with every principle of justice, and in no way necessary to preserve the Brahmins and other highcaste men from defilement.

“I am, therefore, further instructed to request that you will issue orders to all the judicial functionaries under your control, directing them to allow the above classes access to the interior of their Courts, and at the same time to be careful that such arrangements are made as will avoid the possibility of their being brought in any sort of contact with the rest of the community.”

63. At the head of every written judgment and of the record of the heads of the charge to the jury, the names of all the accused persons shall always be set out, together with the numbers by which they may respectively be referred to by the Court in the course of the judgment or charge to the jury. (See *Government Gazette* for 1890, Part I, page 145).

The finding in murder cases should specify the name or names of the person or persons to whom death has been caused. (*Vide Government Gazette* for 1891, Part I, page 10).

64. No boy shall be sent to a Reformatory School, if under ten years of age, for a less period than seven years; if over ten years of age, for a less period than five years, unless he shall sooner attain the age of eighteen years. (*Vide Government Gazette* for 1890, Part I, page 758).

65. The High Court decided, on 30th September 1890 that, in cases where a person has been sentenced to two periods of imprisonment, of which the second is to commence on the expiration of the first, as contemplated in Section 397 of the Code of Criminal Procedure, 1882, and Section 317 of the Code of 1872, the first period of imprisonment must be held to expire either on the date when it is completed by lapse of time, or, in cases where, before such completion of the period, the sentence is reversed or modified by a Court of appeal or revision, on the date of the order reversing or modifying the sentence. If the order of reversal or modification is passed after the completion of the first sentence, it cannot take retrospective effect in cases where the second sentence is to commence on the expiration of the first, so as to enable a Superintendent of a Prison to treat the second sentence as one commencing on the date on which it was passed or on the date of the expiration of the first sentence as modified. In such cases, the second sentence must be regarded as having commenced on the date on which the first sentence would have expired by lapse of time, if it had not been reversed or modified; the result being that the prisoner acquires no right to a reduction of the aggregate terms of imprisonment by his subsequent acquittal of the offence for which he has undergone the sentence passed upon him or by a subsequent modification of that sentence. (G. R. J. D. 1829, 5th March 1897).

66. The attention of all Criminal Courts should be called to the fact that the Reformatory Act contemplates in each case the passing of an ordinary sentence of imprisonment, and in addition thereto an express order for confinement in a Reformatory School.

It may be pointed out to Judicial Officers that in the case of a sentence of imprisonment and a simultaneous order for confinement in a Reformatory, two warrants are necessary if the juvenile offender is sent first to the jail of the District, until he can conveniently be removed to the Reformatory School. The warrant to the Superintendent of the Jail must be for execution of the primary sentence, unless the order for reformatory confinement is meanwhile given effect to, and the prisoner accordingly removed, and it must be accompanied by a warrant to the Superintendent of the Reformatory. The Superintendent of the Jail must, on arrival of a juvenile convict forthwith send intimation to the Inspector General of Prisons, and that Officer should take steps at once for the transfer of the juvenile with the proper warrant to the Reformatory School. (Government Resolution, J. D. No. 3131 dated 13th June, 1890).

67. Every Criminal Court, when it passes a sentence of imprisonment or transportation, shall endorse on the back of the warrant with which, under the provisions of Section 383 of the Criminal Procedure Code, it forwards the convict to the jail, the following particulars :—

Age of convict.

Caste of ditto.

Place of residence of ditto.

Plea of ditto.

Opinion of the Assessors (where the trial has been conducted with the aid of Assessors).

If at the trial any previous conviction has been established, the following particulars shall also be given :—

Name of the offence of which the convict was previously convicted.

Sentence passed upon him.

Date of said sentence.

Name and designation of trying authority.

The above particulars shall be written in the same language in which the warrant itself is written.

68. When any person serving under the Government of Bombay in the Military Department is convicted in a Criminal Court, such Court shall inform the Officer Commanding the Regiment or Corps to which the convict belongs.

69. When a Military pensioner is convicted and sentenced to imprisonment in a Criminal Court, the facts of the case should be reported, without delay, to the Controller of Military Accounts of the Circle to which the pensioner belongs.

70. When a reservist of the Native Army is sentenced by a Criminal Court to transportation or imprisonment for any term exceeding three months, the facts of the case should be reported, without delay, by such Court to the Officer Commanding the Reserve Centre. (Vide *Government Gazette* for 1895, Part I, page 853.)

71. The following instructions sanctioned by the Government of India in connection with the trial of accused persons subject to the jurisdiction of both Criminal Courts and Courts-martial and referred to in Government Resolution in the Judicial Department No. 3995, dated the 25th May 1897, are, with the concurrence of H. E. the Governor in Council, issued by the Honourable the Chief Justice and Judges for the guidance of the Criminal Courts in this Presidency, so far as they relate to them :—

Instructions for the guidance of military officers in respect of the trial of accused persons subject to the jurisdiction of both criminal courts and courts-martial, sanctioned by the Government of India and referred to in Government Resolution, Judicial Department, No. 3995, dated 25th May 1897.

The attention of all concerned is invited to G. G. O. No. 182, dated the 12th February 1897, in which it is declared that the officer commanding the troops to which an accused person, subject to the Indian Articles of War, belongs, shall be "the prescribed military authority" for the purposes of Articles 174 and 175 of the said Articles.

2. The offences against the criminal law which are cognisable by courts-martial are detailed in the Indian Articles of War,

and reference should be made, in particular, to Articles 8, 42, 44, 59, 60, 61, 64, 65, 171 and 173. The jurisdiction of courts-martial over offences cognisable also by the ordinary criminal courts is more limited in the case of the Native, than in that of the British, Army, and, as a general rule, an offence committed by a person subject to the Indian Articles of War against the person or property of a civilian is not triable by court-martial.

3. When a person subject to the Indian Articles of War is accused of an offence in respect of which both a criminal court and a court-martial have jurisdiction, and is in military custody, the prescribed military authority, if he decides that the case ought to be tried by a criminal court, should move the Magistrate to investigate the charge handing over the accused to him for that purpose. If, however, he decides that the charge is to be tried by court-martial, the accused will be kept in military custody pending such trial and the Magistrate, should he consider that the charge should be tried by a criminal court, must take action under Article 175.

When, on the other hand, the accused in such a case is in civil custody, the Magistrate should not proceed to investigate the charge until he has communicated with the prescribed military authority and ascertained that officer's decision under Article 174. If dissatisfied with the decision of that officer in favour of a court-martial, the Magistrate should take action under Article 175, but in the meantime the accused should be delivered into military custody.

4. Thus, if the civil police have information of a theft or other offence alleged to have been committed by A, a person subject to the Indian Articles of War, and the case is one in which both a criminal court and a court-martial have jurisdiction, and if in consequence A is arrested by such police, A must be at once placed in civil custody wherever the arrest may have been effected, and will remain in such custody unless and until the officer commanding the troops to which he belongs decides that he shall be tried by court-martial and directs that he shall be detained in military custody. To that officer an intimation of the fact of A's arrest should be communicated by the Magistrate

who has concurrent jurisdiction, and if the decision under Article 174 is in favour of a court-martial and is communicated within a reasonable time to the Magistrate, the Magistrate should at once cause A to be handed over to the military authorities under a proper escort, to be provided by the latter, reserving to himself the right of, if necessary, compelling a reference to the Governor-General in Council under Article 175.

5. In case of doubt as to whether an accused person in civil custody is liable to be tried by court-martial, the Magistrate concerned should, before beginning any investigation into the charge, communicate with the officer commanding the troops to which such accused person belongs, and proceed as directed in the latter part of paragraph 3 above. In similar case of doubt, if the accused is in military custody, the Magistrate would do well to communicate first with the officer commanding the troops to which the accused belongs, before taking formal action under Article 175.

6. Where a criminal court and a court-martial have concurrent jurisdiction, it is, as a rule, desirable that the accused should be tried by the latter; but in cases of thefts of arms, ammunition or other property belonging to the Government, if there is reason to suspect that persons, other than the accused, who are not subject to the Indian Articles of War, are, directly or indirectly, implicated, it may often be expedient for the officer commanding the troops to decide in favour of investigation by the criminal court as more likely to ensure the discovery and punishment of all the accessories to the offence. (*Vide Bombay Government Gazette for 1897, Part 1, p. 1452*).

72. By Government Resolution in the Judicial Department, No. 46 of the 4th January, 1888, it is ordered, at the instance of the High Court, that whenever Magistrates are able, consistently with their other duties, to fix the place as well as the date of proceedings before them, whether original or appellate, they should do so, in order to prevent the harassment of the accused persons and others concerned.

Cases in which the attendance of Railway officials is required should invariably be taken up with the least possible delay. (*Vide Government Gazette, 1890, Part I, page 145*).

73. No difficulty should be made, after the final disposal of a case, in returning documents, whether original or certified copies, on copies being filed, except when, for some particular reason, the retention of the original is deemed necessary. In that case a copy or an extract should be given on application.

CHAPTER VI.

APPEALS TO COURTS OTHER THAN THE HIGH COURT.

74. Except where the petition requires a stamp, it is not material whether the appeals of several convicted persons in the same case are made jointly in one petition or separately. Where a stamp is required, the petitions must be separate, and separately numbered, and be accompanied by separate copies of the judgment or order appealed against, unless the Court under Section 419 Criminal Procedure Code otherwise directs.

75. When owing to the proceedings of a Magistrate having been sent to the High Court under Section 438, it is impossible for an Appellant to obtain a copy of the judgment, the Court to which an appeal has been made should accept the petition of appeal, though not accompanied by a copy of the judgment as required by law. The Court should then immediately write to the High Court, stating that an appeal has been made and asking for the return of the record and proceedings. The High Court will, thereupon, stay the exercise of its revisional jurisdiction, and await a report from the Court of the result of the appeal.

76. Whenever, under the provision of Section 426, 438 or 498 of the Criminal Procedure Code, the Court of Sessions directs any person to be released on bail, the Sessions Judge shall order such bail to be given before the Nazir of the District Court, or before such Magistrate as the Judge may think most convenient.

77. In case of an appeal presented under Section 419 of the Code of Criminal Procedure, there shall be posted up in the Appellate Court in a place accessible to the public, notice of the day appointed for considering the petition of appeal, in order to afford to the appellant or his pleader a reasonable opportunity of being heard in support of the same. Such notice shall be posted two days at least before the day so appointed, unless the appellant or his pleader consent to a shorter notice or to dispense with a notice.

78. With reference to No. 49 of the Rules relating to the remuneration and duties of Law Officers printed at pp. 740 to 746 of the *Government Gazette*, for 1882, Part I, the High Court considers that, when on the day fixed for hearing a criminal appeal, the appellant is represented by counsel, the Sessions Judge should adjourn the hearing of the appeal if he considers that sufficient notice has not been given to the Government Pleader to enable him to prepare himself in the case. Intimation that this will be the practice of the Court should be given to the Pleaders.

79. The Judge or Magistrate deciding an appeal shall transmit a copy of his judgment to the Magistrate, whose decision was appealed against, or his successor in office.

80. By Section 424 of the Criminal Procedure Code, the provisions of Section 367 are made applicable to the judgments of Courts of Appeal, except when the appeal has been summarily dismissed under Section 421.

CHAPTER VII.

APPEALS TO THE HIGH COURT AND SUPERINTENDENCE AND REVISION AND TRANSFER OF CASES BY THE HIGH COURT.

81. Every officer in charge of a jail, on receiving, under Section 420 of the Code of Criminal Procedure, a petition of appeal to the High Court against a sentence or order of a Sessions Judge, shall at once intimate the fact to such Sessions Judge and at the same time inform him whether the petition of appeal is accompanied by a copy, in English, of the Sessions Judge's judgment or charge to the jury. If the petition of appeal be not accompanied by such copy, the Sessions Judge shall at once forward to the High Court a certified copy of the judgment recorded in the case.

82. When cases are called for from the Sessions Courts by the High Court, the Sessions Judges shall, if the papers are not asked for in original only, forward with them a fair copy of the English record and proceedings. The copy * shall be signed by the Sessions Judge in attestation of its correctness, and shall contain first the record of the proceedings, and then the depositions and the statements of the accused persons, written if possible on the printed form, and each exhibit. The fair copy shall be prefixed by a list in the following form:—

List of Evidence and Exhibits numbered and paged as recorded in the trial of Case No.		of the Calendar for	
tried by the	Sessions Judge of		
1.	2.	3.	4.
Particulars.	Exhibit No.	Page.	Remarks.

As to the manner of transmitting the fair copy and the original record, see Circular 132 below.

Care should be taken that the copy is accurately made, and that there is no unnecessary addition to the bulk of the proceedings

* As, under the provisions of Section 419 of the Code of Criminal Procedure, a copy of the judgment accompanies the petition of appeal made by the accused to the High Court, no second copy need be made to accompany the fair copy of the Sessions Judge's proceedings.

by blank pages being filed, or by petty items of detail being written on separate pages.

83. Records sent to the High Court should be properly arranged and accompanied by a list or *Ferist* in the following form, signed by a clerk or other officer of the Court.

List of the Record and Proceedings forwarded to the High Court with Letter No. dated 190 in
Endorsement No. of 190 .

No.	Description.	REMARKS.
1	<u>Sessions Judge's</u> English proceedings <u>District Magistrate's</u> in original consisting of Exhibits Nos. 1 to	
2	Do. Vernacular do. Exhibits Nos. 1 to	
3	Miscellaneous papers, if any, in the <u>Sessions</u> District Magistrate's Court marked in red ink pages 1 to	
4	<u>Committing</u> Magistrate's English proceed- <u>Trying</u> ings consisting of Exhibits Nos. 1 to	
5	Do. Vernacular do. Nos. 1 to	
6	Miscellaneous papers, if any, in the Magistrate's Court marked in red ink pages 1 to	
7	Police papers marked in red ink pages 1 to	

N. B. Each part of the record as stated above should be stitched together in the book-form separately, a note being made of Exhibits that cannot be stitched, such as account-books, files, &c.

84. Fair copies should be made and transmitted in the same way when cases are submitted to the High Court under Section 307 of the Code of Criminal Procedure.

85. In Confirmation Cases the fair copy should be despatched to the High Court within five days of the decision. A copy of the judgment or charge should in all such cases be sent, and the copy should be written on one side of the paper only, as the record is to be printed. (High Court Circular No. 815 of 21st April, 1893).

86. When the High Court calls on a Magistrate for the record of a case, which record has already been sent to the Sessions Court in appeal, the Magistrate shall make a return accordingly to the writ. When a case is called for at the same time both on appeal and by the High Court in revision, the Magistrate shall comply with the order of the Court of Appeal and make a return accordingly to the writ of the High Court.

87. When proceedings are called for by the High Court from any Magistrate, the copy of any order made by the Appellate Court and transmitted to the Lower Court shall be forwarded to the High Court with the record and proceedings of the Magistrate.

88. Returns to all writs issued from the High Court calling for records and proceedings of Criminal Cases should if possible be made within the time mentioned therein and in no case later than eight days after the expiry of such time. In case the period prescribed is exceeded the return should be accompanied by a report explaining the cause of such delay.

89. In returns to writs in cases wherein the punishment of whipping has been awarded in addition to imprisonment, it should be certified whether the whipping has been actually inflicted.

90. Returns should be made to all writs issuing from the High Court, if possible within a fortnight, in the form of an endorsement on the writ certifying its execution, or the reasons which may have prevented its execution. When such execution involves the arrest of an accused person, or the release of a prisoner, the return should be made immediately after such person has been arrested, or liberated; when execution involves the

refund of a sum of money, the return should be made immediately after the refund has been made. The date of the arrest or the refund should be certified in the return.

In cases in which prisoners have been liberated, the date and hour at which the Superintendent of Jail received the order to release a prisoner and the date and hour at which he released the prisoner should be certified.

On the receipt of a writ from the High Court, the date of receipt shall be at once endorsed thereon; and when the return is made, the reason shall be stated for any delay that may have occurred beyond the period prescribed for the return.

91. In cases where the execution of a writ involves the release of a prisoner in jail as well as the refund of a fine the return should be made certifying only the release of the prisoner if it is found that the fine cannot be refunded for a period of 15 days after such release. The fact of the refund of the fine in such cases may be subsequently certified by a separate letter in continuation of the original return.

92. All references submitted to the High Court under Section 438 of the Code of Criminal Procedure are to be accompanied by the record of the case, and by a statement of the case, in English giving—

- (i) A brief abstract of the case.
- (ii) The sentence or order of the Lower Court, and the name of, and powers exercised by, the Magistrate passing it.
- (iii) The particular portion of the finding, sentence or order, which is considered incorrect, illegal, or improper, or the particular portion of the proceedings which is considered irregular.
- (iv) The grounds upon which it is proposed that the High Court should exercise the powers conferred by Section 439 of the Code of Criminal Procedure.
- (v) A statement (where appropriate) showing how much of the sentence the accused has undergone, and if he has been sentenced to fine or whipping, whether the fine has been realized or the whipping has been inflicted.

More than one case should not be submitted with one letter. Each case should be accompanied by a letter and the statement referred to above. The fact of the reference and a copy of its terms should be communicated by the Court making it to the Lower Court.

93. When any person desires to make any application to the High Court in its Civil or Criminal Jurisdiction, and to support the same by an affidavit or statement on solemn affirmation, any Court, or Magistrate, or the Clerk or Nazir of a District Court, shall, on application, take such affidavit or statement on solemn affirmation and on payment, by an affixed stamp, of such fee as may be legally prescribed, authenticate the same by signature.

94. The following are the orders of the Government of Bombay with respect to the attestation of affidavits and powers of attorney and such like documents by public officers (see Government Resolutions, Judicial Department, Nos. 2308 of the 12th June 1871, 429 of the 21st January 1887, and 357 of the 10th January 1888).

The Right Honourable the Governor in Council is of opinion that the practice of attesting documents by Judges, Assistant Judges, Magistrates or other Judicial Officers of corresponding rank should be restricted as much as possible, as considerable inconvenience would be occasioned if public officers of this class were liable to be called away from their duties to prove in a court of Justice the execution of documents which they had attested.

There are cases, however, in which it would be right and proper that such attestation should be made, and the determination of this question must be left to the discretion of the officers applied to.

In all instances where attestations are made by public officers of this class, a fee of one rupee should be taken in the shape of a stamp, which should be affixed to the documents and obliterated.

The practice which has hitherto obtained of the attestation by the Nazirs of Civil Courts of vakalatnamas and mukhtyarnamas to be used in civil suits and appeals and other judicial proceedings, would appear to have been useful and convenient, and may be continued if held to be legal and approved of by the High Court.

In such cases a small fee may be charged, as is now done, which should be appropriated by the officer who makes the attestation according to the following scale :—

Nazir of High Court....	....	....	8 annas
Nazir of District or Subordinate Court...	....	....	4 annas

and a stamp of equal amount should be affixed to the document in each case and obliterated.

This extends to affidavits attested or made before any officer of a Court appointed for the purpose by the District Judge; except in the case of affidavits made for immediate use in the Court whereof the attesting officer is a functionary. In the cases so excepted, no fee is to be levied. If a Judge or Assistant Judge attests an affidavit, he shall not receive any fee, but the fee that but for this provision would be payable to him, shall be added to the stamp fee paid for the attestation; subject to the exception already indicated as to an affidavit to be immediately used in the Court.

These attestations should only be made when the documents mentioned are brought to the Court. Parties who require documents to be attested at their own houses should have recourse to the Registration offices.

95. When a Court reports a case to the High Court for transfer under Section 526 (3) of the Criminal Procedure Code 1898, it should give notice to the accused and the complainant (if any) of the application and forward, along with its report, any objections that may be made to the proposed transfer. (Vide *Bombay Government Gazette* for 1898, Part 1, page 1177.)

CHAPTER VIII.

EXECUTION OF SENTENCES AND ORDERS IN APPEAL AND REVISION.

96. Any fee which a Criminal Court orders to be repaid to a complainant under Section 31 of the Court Fees' Act, 1870, shall be regarded as a fine, subject to the provisions of Section 545 of the Code of Criminal Procedure.

97. Subject to the provision in Section 390 of the Code of Criminal Procedure, 1882, empowering a Criminal Court to fix the place at which a sentence of whipping shall be executed, in the case of an offender who is sentenced to whipping only, and to the provision in Section 391, empowering a Judge or Magistrate to order the whipping to be inflicted in his own presence, in cases where the offender is sentenced to whipping in addition to imprisonment, His Excellency the Governor in Council is pleased, in exercise of the powers conferred by Section 392 of the Code, and in supersession of Notification No. 567, dated the 27th January 1883, and published at page 102 of part I of the *Bombay Government Gazette* for 1883, to direct that, in the case of a person of or over sixteen years of age, the punishment of whipping shall, when inflicted in private, be inflicted on the bare buttocks, and when in public, across the bare shoulders. By a whipping in private is to be understood a whipping inflicted within the precincts of a prison. A whipping inflicted without such precincts is a whipping in public. (G. R., J. D., No. 608 dated 22nd January, 1897).

98. His Excellency the Governor in Council is pleased, in exercise of the powers conferred in that behalf by Section 392 of the Code of Criminal Procedure, 1898, to direct that, in the case of a person under 16 years of age, the punishment of whipping shall be inflicted in private with a light ratan across the bare buttocks. (G. R., J. D., No. 6222 dated 16th September, 1898).

99. By Bombay Government Resolution, Judicial Department No. 426 dated 18th January, 1900, Judicial Officers have been

informed that sentences of term-transportation would again be executed at Port Blair, and their attention has been invited to Section 59, Indian Penal Code.

100. By Bombay Government Resolution, Judicial Department, No. 4135 dated 15th June, 1898, Sessions Judges have been invited to arrange that copies of judgments in connection with convicts sentenced to transportation should be sent to Superintendents of the Prisons concerned as soon as the appeals of such prisoners are decided.

101. Whenever an accused person is sentenced to transportation for life the copy of the judgment to be sent to the Superintendent of the Jail should not be sent until the period of appeal to the High Court has expired, or if any appeal is preferred, until the result is known. (High Court Circular No. 2167 dated 19th-December, 1892).

In cases tried by jury it will be sufficient if a copy of the heads of the Judge's charge to the Jury is obtained for transmission with the prisoner. (Government Resolution, Judicial Department, No. 5490 dated 7th October, 1890).

102. The attention of Sessions Judges and Magistrates is called to Section 70 of the Indian Penal Code, and Sections 336 and 387 of the Code of Criminal Procedure, and to the fact that proceedings are seldom taken to recover fines after the imprisonment in default has expired. If at any time subsequent to the return of the original warrant and within a period of six years from the passing of the sentence, the fine, or any part of it, remains unpaid, and the Court, from information gained, has reason to think that there is any moveable property belonging to the offender, it should issue a fresh warrant for the attachment and sale of that property within a specified period, returnable within a certain time.

103. When any Court recovers a fine, or any portion thereof, inflicted upon a prisoner who is already in jail, or who is liable to be further detained in jail in default of payment of that fine, such Court shall be held responsible for the immediate communication to the Jailor of the amount of the fine so recovered.

104. When a Court has committed a person to Jail in default of payment of fine, and such person is subsequently transferred to another Jail, the Superintendent of the former Jail shall at once notify the transfer to the Court.

105. The following rules are framed to provide for the execution of orders of Courts of appeal, reference, or revision :—

- (i). When a sentence on a prisoner is reversed or modified on appeal by a Court other than the High Court, a fresh warrant will be issued by the Appellate Court to the officer in charge of the jail, and its order will be communicated to the Lower Court for record.

Provided that when the Appellate Court orders the retrial or committal for trial of a prisoner under Section 423 of the Code of Criminal Procedure, it shall communicate its order to the Court whose decision has been reversed, and that Court shall thereupon make such orders as are conformable to the judgment or order of the Appellate Court. (See *Government Gazette* for 1892, Part I, page 73.)

- (ii). When an appeal is rejected or a sentence confirmed by an Appellate Court other than the High Court, an intimation to that effect will be sent to the Officer in charge of the jail by such Appellate Court, and its order will be communicated to the Lower Court for record.
- (iii). When a case is decided on appeal or revised by the High Court, the Court or Magistrate to which the High Court certifies its order will proceed, under the provisions of Section 425 or 442 of the Code of Criminal Procedure, to issue, when necessary, a fresh warrant or order to the Jailor.
- (iv). On the rejection by the High Court of an appeal or application for revision from a prisoner in jail being communicated to the Court by which he was convicted, such Court is at once to cause intimation of the decision to be given to the prisoner.
- (v). In cases referred by the Court of Session for the confirmation of a sentence of death by the High Court, the

High Court will send a copy of its order to the Court of Session, which will then issue warrants to the Officer in charge of the jail, as provided in Section 381 of the Code of Criminal Procedure.

- (vi). In all cases in which a sentence or order is modified or reversed, whether in appeal or revision, a separate warrant should be issued as regards each prisoner whose sentence has been so modified or reversed.
- (vii). In all cases the Superintendent of the jail will acknowledge, by letter, the receipt of any warrant, or order, or intimation, and will inform the prisoner of the result of his appeal or application, reporting the fact in the letter.
- (viii). In all cases in which a fresh warrant has been issued whether in appeal or revision, the warrant should be returned to the Court issuing it when it has been fully executed.
- (ix). When the High Court either (1) sentences on appeal a person who has been acquitted by a Subordinate Court, or (2) passes in revision a sentence involving re-imprisonment on a person who has already completed the term of imprisonment awarded by a Subordinate Court; (a) if the accused person appears, the High Court will, immediately upon passing sentence of imprisonment, order the arrest of the convict, and a warrant will be issued in the usual form, either to the keeper of the Common Jail in Bombay, or to the officer in charge of some District Jail (generally that of Thana); and immediate orders will thereupon be issued to the Sheriff for the conveyance of the convict to the place of imprisonment; (b) if the accused person does not appear, the High Court's sentence or order will be sent to the Court by which the trial was held, and it will thereupon be the duty of such Court to carry into effect the sentence or order of the High Court, in the same manner as if such sentence or order had been passed by itself.
- (x). In cases where an Appellate Court has ordered a fine inflicted by a Court of first instance to be refunded, the

Appellate Court should forthwith certify its order to the Court of first instance, and the Court of first instance should, on receipt of the Appellate Court's order for such refund of the fine, immediately prepare a payment order, if the fine has been levied, and deliver it to the payee, whether he applies for it or not. The Court of first instance should at the same time ascertain from the payee at what treasury or sub-treasury he desires the refund to be made and at once direct the officer in charge of such treasury or sub-treasury to make the refund, and inform the Appellant of having done so. The officer in charge of the treasury or sub treasury should, on presentation of the payment order and without requiring the Applicant to furnish an official copy of the Appellate Court's order or judgment, or any other document besides his bare application, make the refund upon demand of the applicant as soon as he has furnished satisfactory proof of his identity.

In such cases a written application from the person entitled to the repayment of the fine is not required ; and should an applicant for refund present at any time such a written application, it should be accepted on plain paper without any Court fee.

(Vide *Government Gazette* for 1896, Part I, pp. 427 and 428.)

106. The following Circular from Government in the Judicial Department is re-published for convenience of reference :—

CIRCULAR No. 382 OF 1866.

JUDICIAL DEPARTMENT.

To the POLICE COMMISSIONERS and COMMISSIONER in SIND.

Her Majesty's High Court having ruled that, under Section 383* of the Code of Criminal Procedure, read in connection with Sections 16 and 17 of the Bombay Act IV of 1865 (for the regulation of Mofussil Jails) the Jailor is the officer in charge of the jail to whom warrants for the execution of capital sentences should be addressed by the Sessions Courts, the Honourable the Governor in Council is pleased to direct that every execution shall be attended by a *Magistrate with full power*, or by a Superintendent or Assistant Superintendent of Police, and that the officer so-attending shall countersign the return of execution to the Court of Session.

* Cf. Section 381 of Act X of 1882, and Section 30 of Bom. Act II of 1874.

(2). On the receipt of a confirmation by Her Majesty's High Court of Judicature of a capital sentence, it should be specified in the warrant addressed to the Jailor that the execution is not to be carried out until a day therein named, that shall be at least 14 days from the date of receipt of the order of confirmation.

107. i. When a sentence of death has to be carried into execution, the Sessions Judge shall make arrangements to secure the attendance thereat of a First Class Magistrate or Superintendent or Assistant Superintendent of Police, as specified in the foregoing circular; and in the warrant which the Sessions Court issues to the Jailor, he shall be directed to carry out the execution in the presence of a First Class Magistrate or a Superintendent or Assistant Superintendent of Police.

ii. When sending a warrant for execution to the Jailor, the Sessions Judge shall at the same time inform the Superintendent of the jail of his having done so.

108. Orders passed by telegraph for the suspension or execution of a sentence of death will invariably be followed by orders by letter; and the Jailor or other officer responsible should, except in extraordinary circumstances, await the order by letter before carrying out an execution. (Government Resolution, Judicial Department, No. 3235 dated 18th June, 1890).

109. i. The following instructions are issued in supersession of all previous Government orders, including the instructions contained in Government Resolution No. 3713 dated 14th July, 1888, in respect of the procedure to be followed when a convict, who is under sentence of death, applies to the Governor in Council for the remission or commutation of the sentence.

ii. No order will be issued by Government to suspend execution of the sentence of death pending consideration and disposal of such application.

iii. The order of Government disposing of the application will be forwarded from the Secretariat to the Judge of the convicting Court and also to the Superintendent of the Jail in which the convict is confined.

iv. It does not appear to the Governor in Council that it is desirable to modify or rescind the Circular No. 2488, dated 26th

August, 1867, which lays down that an execution shall not be fixed until at least 14 days from the date of receipt by the Sessions Judge of the order of confirmation. The order of Government on the case when received by the Superintendent of the Jail will be his authority to carry into effect the sentence of death, or to inform the convict that the sentence is commuted.

v. When any appeal has been made to Government in case of a capital sentence, the sentence must in no case be carried out, until the orders of Government disposing of the appeal are received by the Superintendent of the Jail. Under these instructions, it will never be necessary for the Superintendent of the Jail to ask for the orders of Government regarding the postponement of an execution, by telegraph or otherwise. If he has reason to suppose that the receipt of the order of Government is, by accident or otherwise, unduly delayed, he may, in his discretion, communicate with Government on the subject by telegraph, but he will ordinarily assume that any delay which occurs is caused by the necessity for intermediate inquiry. (G. R., J. D., No. 1481 dated 18th March, 1889).

110. An order of Government will be sufficient authority to the Superintendent of a Jail to carry out a sentence of execution which has been postponed pending an appeal to Government. A fresh or amended warrant by the Judge is not necessary. (Government Resolution, Judicial Department, No. 35 dated 6th January, 1892).

111. Under the provisions of Section 384, Criminal Procedure Code, warrants should invariably be directed to the officer in charge of the Jail in which the prisoner is at the time of conviction, or is to be confined immediately upon conviction. (High Court Circular No. 2021 dated 24th November, 1899).

112. The following is among the rules under Section 565 (3), Criminal Procedure Code, made by the Local Government with the previous sanction of the Governor General in Council :—

When a duly authorized Court or Magistrate at the time of passing sentence makes an order under Section 565, Criminal

Procedure Code, that the sentenced person's residence and any change of residence after release be notified, such Court or Magistrate shall attach a copy of such order to its warrant issued under Section 383, Criminal Procedure Code. (Government Notification No. 1040 dated 9th February, 1900, Government Gazette, dated 22nd February 1900, page 374).

CHAPTER IX.

EUROPEAN BRITISH SUBJECTS.

113. Rules regarding the commitment of Europeans and others to the High Court Sessions :—

- (i) It shall be the duty of committing Magistrates, at the time of commitment, to take recognizances from prosecutors and witnesses for the prosecution whose attendance may be necessary at the trial, binding them to be present at the High Court on the first day of the particular Sessions to which the case is committed.
- (ii) The Sessions will commence on the following dates :—
 - 1st.—The 2nd of February,
 - 2nd.—The 3rd of April,
 - 3rd.—The 27th of June,
 - 4th.—The 1st of September,
 - 5th.—The 20th of November,
 unless any such date shall fall on a Sunday, when the Sessions will begin on the following Monday.
- (iii) Witnesses for the defence shall, ordinarily, under Section 216 of the Code of Criminal Procedure, be summoned by the Magistrate to attend at the High Court on the first day of the Sessions to which the accused is committed.
- (iv) It shall further be the duty of the Magistrate to forward to the Clerk of the Crown, with the record of his proceedings, a list of the witnesses for the prosecution from whom recognizances have been taken, and also of the witnesses for the defence to whom summonses have been issued, with a note of the date on which such witnesses have been required to be in attendance at the High Court.
- (v) Should the Magistrate, in his discretion, consent to summon other witnesses on behalf of the accused at any

time subsequent to the commitment, he shall transmit to the Clerk of the Crown a supplemental list without delay.

- (vi) It shall further be the duty of the Magistrate, upon receiving from the Clerk of the Crown a letter stating the day on which the Criminal Sessions are to be held and requesting him to cause the witnesses to be served with notices to attend on the day named, to cause the witnesses to be served with such notices in sufficient time to ensure their attendance on that day, and to take any other proceedings that may be necessary for the purpose.
- (vii) When an accused person is sent to Bombay in custody to await his trial at the Criminal Sessions of the High Court, the warrant for his detention shall be addressed to the Superintendent of the House of Correction.

114. Rules relating to the trial of European British-Subjects by District Magistrates, framed under Sections 276 and 451 B of the Code of Criminal Procedure, 1882, as amended by Act III of 1884.

- (i) Trials of European British-Subjects by jury are to be held in every case at the seat of the Sessions Court, where there is a Sessions Court within the district.
- (ii) In preparing the list of jurors or assessors, under Section 321 of the Code of Criminal Procedure, care is to be taken to include in the list such qualified Europeans and Americans as shall be available for service in any trials by the Sessions Court or District Magistrate.
- (iii) In the case of a District in which there is no Sessions Court a jury list is to be prepared by the Sessions Judge of the Division and the District Magistrate as if for trials in a Court of Session at the head-quarter station of such district, and from such list the District Magistrate is, when the need arises, to choose jurors as hereinafter provided.
- (iv) The District Magistrate, when about to try a European British-Subject by jury, is to summon to the District Magistrate's *Cacheri* jurors selected under Section

326 as for the Sessions Court, from amongst the jurors or assessors in the list framed under Section 321, Criminal Procedure Code.

- (v) The trial of a European British-Subject by a Magistrate is to be conducted under the same rules as in the Sessions Court so far as the application of such rules shall be practicable.
- (vi) Where jurors are not available in the district, the District Magistrate is to transfer any case of a charge against a European British-Subject in which a trial by a jury is claimed, to the Magistrate of the nearest district wherein jurors are available in order that such District Magistrate may proceed according to the foregoing rules.
- (vii) In cases under Section 451B, the District Magistrate desiring to transfer a case should transfer it to the Sessions Court or to the District Magistrate of the nearest district within which jurors are available under the foregoing rules in order that such case may be dealt with as hereinbefore provided.

CHAPTER X.

RECORDS AND COPIES.

115. Subject to the provisions of Circular 117 except on the writ or order of a Superior Court, no Sessions Judge or Magistrate shall part with the custody of the records of a case until the period within which an appeal can be made has expired, or the appeal has been disposed of.

116. In the event of a District Superintendent of Police or other gazetted Government officer desiring to inspect any of the records of a Magisterial Court, his proper course is to apply to the District Magistrate, who should call for the records and proceedings from the Lower Court and after inspecting them decide in the exercise of his discretion whether they should be forwarded to the officer desiring to peruse them, or whether his request should be refused and he be required to obtain copies of such documents as he wants in the usual manner. (G. R., J. D., No. 130 dated 7th January 1901).

117. When Government desires to consider the propriety of making an appeal under Section 417, Criminal Procedure Code, it is ordinarily sufficient that the Public Prosecutor or other officer appointed by Government should have an opportunity of taking copies of the record. But in exceptional cases, in which Government may consider it essential to see any original documents, such documents may be given into the possession of the officer appointed by Government to receive them, under such precautions for securing their safe-keeping and return as to the Court may seem necessary.

118. *The following rules for the destruction of useless records have been framed by the High Court and confirmed by the Government of Bombay and sanctioned by the Government of India under Act III of 1879.*

A.

COURTS OF SESSION.

i. The vernacular records of trials held before Courts of Session may be destroyed at the end of the tenth year from the year in which the trial was concluded.

ii. But the charge or charges (as amended, if there be any amendment) should be preserved for a further period of ten years, and may then be destroyed.

iii. The English records of trials held before a Court of Session are to be permanently preserved.

iv. With regard to records connected with the administration of the Criminal Jails before Bombay Act IV of 1865 came into operation, and now in the custody of Courts of Session, if the Sessions Judges who are still in possession of them find their own records crowded, they should inform the Superintendents of Jails that they propose to destroy all the correspondence, with the exception of such documents as the Superintendents may desire to take over; and to allow six months for the Superintendents to make their selection, after which time the remaining papers should be destroyed.

B.

MAGISTRATES' COURTS.

i. The records of trials by Second and Third Class Magistrates should be destroyed after the expiration of twelve months from the date of disposal, with the exception of the charge, finding and sentence.

ii. The monthly returns forwarded by Second and Third Class Magistrates to the District Magistrates should be destroyed after the expiration of twelve years. The office copies of, and District and Sub-Divisional Magistrates' remarks on, the same may be destroyed after the expiration of three years.

iii. The records of trials by District Magistrates and Magistrates of the First Class should be destroyed after the expiration of six years, with the exception of the charge, finding and sentence.

iv. Care should be taken that no cases are destroyed which are likely to be required for the conviction of offenders still at large or for the identification of stolen property still undiscovered.

v. The undermentioned papers being in, or belonging to, the Courts of the Magistrates are to be destroyed as follows :—

After twelve years.

1. Receipts passed on handing over intestate estates to the District Court.
2. Register of unclaimed goods transmitted to the Civil Court.

After six years.

3. Proceedings in cases of disputes as to immoveable property under Section 145 of the Criminal Procedure Code, with the exception of the final order.
4. Proceedings taken in connection with petitions for maintenance under Section 488 of the Criminal Procedure Code, with the exception of the petition and the final order.
5. Proceedings in cases under Section 144, or under Section 133 of the Criminal Procedure Code, except the final order.
6. All papers relating to the disposal of suspicious property under Section 524 of the Criminal Procedure Code, of property produced in criminal cases, and all reports and returns regarding the sale of unclaimed property.
7. Proceedings under Chapter VIII of the Criminal Procedure Code, except the final order.
8. Proceedings connected with petitions of appeals under Section 407 of the Criminal Procedure Code, except the final order.
9. Warrants for recovery of fines.
10. Register of ownerless property.
11. Register of warrants handed over to the Chief Constable for recovery of fines.

After five years.

12. The monthly returns of appointments of Police Patels and all papers relating to the issue of sanads, &c.
13. All reports relative to carelessness or other misbehaviour on the part of Police Patels and their consequent suspension.

14. All reports made by the Police regarding unnatural and sudden deaths, and the inquests held in consequence of them.
15. All applications for licenses and permits under the Arms Act, together with any other papers relating to the same.
16. All applications for warrants for the arrest of persons selling opium, &c., without a license, as well as any other papers bearing on the subject.
17. Gradation lists of Police Inspectors and Chief Constables.

After three years.

18. Monthly crime report, statement of stolen property recovered, &c.
19. Quarterly return of rewards paid from the value of confiscated articles under the Arms Act.
20. Quarterly return of pending cases submitted to the Registrar, High Court, through the Sessions Judge.
21. Tabular statements showing the working of the Revenue and Magisterial Courts submitted yearly to the High Court.
22. Abstract of Criminal appeal returns.
23. Memoranda forwarding to the Magistrates concerned extracts from the remarks made by the High Court and the Sessions Court on the criminal and appeal returns of the Magistrates of the First Class.
24. Memoranda forwarding to the Magistrates concerned extracts from the remarks of the District Magistrates on the monthly criminal returns of First Class Magistrates.

After two years.

25. Weekly returns of prisoners in Jails.
26. Monthly returns of Lock-ups.
27. Monthly returns from Dispensary Officers.
28. Monthly register of births and deaths.

29. Quarterly returns of untried prisoners, and of coinage cases.
30. Quarterly and monthly returns of unanswered references.
31. Annual judicial statements.
32. Annual returns of Sub-Jails.
33. Criminal complaints dismissed under Section 203 of the Criminal Procedure Code.
34. Returns of Thuggy and Dacoity; of wild beasts killed; of prisoners recaptured; of recognizances forfeited, &c; of lapse of lands granted to village officers for police duties; of payments of rewards for the apprehension of persons accused of the theft of wood, &c., in Government forests; and of the offer of rewards for apprehension of prisoners.
35. Returns and reports received from Police Officers regarding persons supposed to be lunatics.
36. Reports and returns regarding the prevalence of cattle-diseases and of cholera, and correspondence relating thereto.
37. Returns of burning and burial grounds.
38. Papers and returns regarding accidental fires.
39. Reports and papers relating to the arrangements made for troops marching through the district, to the disposal of cases referred for trial, to the discovery of hidden treasures: regarding repairs to Chief Constables' offices, Police gates and Jails, and to the closing of opium shops, &c., during the Moharram holidays.
40. Reports accompanying periodical returns.
41. Reports in cases of prisoners sent to another district.
42. Reports from the Government Pleader, High Court, and from the Public Prosecutor in the District Court, intimating disposal of suits, appeals, &c.
43. Reports regarding the supply of stationery.
44. Reports from the Subordinate Magistrates asking for permission to appear at examinations, and requesting to be invested with Magisterial powers.

45. Reports of the service of summonses and of execution of warrants.
46. Police reports under Section 157 of the Criminal Procedure Code.
47. Police reports regarding the arrest of accused under Section 62 of the Criminal Procedure Code.
48. Police proceedings under Sections 157 and 173 of the Criminal Procedure Code.
49. Miscellaneous returns and reports.
50. Correspondence relative to the establishment of cattle-pounds, and refund of sale proceeds to the owners of impounded cattle.
51. Papers containing detailed information required for the preparation of periodical returns, &c.
52. Applications for copies of public records.
53. Copies of orders under Section 167 of the Criminal Procedure Code.
54. Indents for the supply of printed forms.
55. Miscellaneous papers in cases committed to Sessions Courts.
56. Lists of papers sent to the High Court and all correspondence thereon.
57. Correspondence regarding appointment, transfer, leave, &c., of vaccinators and reports of the prevalence of small-pox.
58. Orders for the appearance of persons whose attendance is required, and correspondence thereon.
59. Receipts from Jailors for the admission of prisoners in Jails.
60. Applications and reports for the payment of *batta* to witnesses.
61. Prices current.
62. Papers regarding prisoners sent to Native States; the admissions of prisoners to bail; the dispersion of unlawful assemblies; the adjustment of fines; the examination of Magisterial accounts, &c; the transfer of cases under Sections 407 and 528 of the Criminal Procedure Code; and compulsory vaccinations.

63. Orders with serial numbers for the guidance of office work for one year.
64. Circular orders cancelled by fresh circulars and not constantly in use.
65. Letter delivery books.
66. Receipt book of prisoners' and witnesses' *batta*.
67. Return of weapons found without licenses.
68. Register of the number of offences under particular sections.
69. Reports by Police Patels and Chief Constables, letters from other *talukas* and miscellaneous applications.
70. Book of notifications of the sale of goods and other matters.
71. Memoranda as to stolen goods received from other places.
72. Register of weights and measures stamped.
73. Register of arms destroyed.
74. Register of stray cattle impounded.
75. Reports about stray cattle impounded, and auction memoranda.
76. Daily book of *batta* paid to witnesses in Magisterial cases.
77. Statement of complaints struck off under Sections 210 and 188 of the Criminal Procedure Code.
78. Memorandum book of weeks in which no trials are held.
79. Register of licenses for sale of gunpowder.
80. Office copies of monthly jail returns.
81. Statement of annual criminal accounts.
82. Miscellaneous papers relating to criminal cases.
83. Receipt book of fines paid into the treasury.
84. Account books of sums specially entrusted to officers in Criminal matters.
85. Account books of contingent charges.
86. Register of process fees received.
87. Register of Court-fee stamps received.
88. Register of articles belonging to prisoners in Subordinate Jails.

89. Descriptive roll of prisoners in Subordinate Jails.
90. Subordinate Jails' Visitors' book.
91. Register of irregularities committed by prisoners in jail.
92. Register book of prisoners' daily work.
93. Register of property produced in evidence in Criminal cases.
94. Monthly returns sent to the Sadar Station of the recovery of fines imposed by Magistrates of the Second and Third Classes in Criminal cases.
95. Annual returns from, and relating to, jails.
96. Papers relating to inquiries on the application of the owners of cattle for their return after seven days.
97. Estimates and reports about building new and repairing the old pounds.
98. Register of orders given to enter offences, Chief Constables' reports and returns by the Village Police of the matters disposed of.
99. Reports for Police aid against offences.
100. Reports asking for leave of absence to Police Patels.
101. Reports about the recovery of Municipal taxes.
102. Reports for the expenses of the burial of heirless persons having no property.
103. Reports asking for the Taluka seals, books, &c.
104. Applications for permission to hold *Nachs*, *Tamashas* and *Uchharas* at night.
105. Memoranda, letters, &c., from Railway Chief Constables.
106. Papers about *Galin* (miscellaneous or unimportant) cases.
107. Reports on Railway accidents.
108. Correspondence regarding the transmission of released convicts from Port Blair to their destinations.
109. Monthly return of fines inflicted on the accused in a criminal case.
110. Correspondence regarding service of summons in Native States.
111. Correspondence regarding the extradition of accused persons.

After one year.

- 112. Papers regarding quarterly returns showing number of admissions into Hospital of European soldiers suffering from venereal diseases.
- 113. Letters to Commanding Officers intimating outbreak of cholera.
- 114. Charge reports from the Jail Superintendents and Civil Surgeons.
- 115. Monthly abstract report of cases and appeals and miscellaneous petitions disposed of and remaining undisposed of.
- 116. Monthly return of fines inflicted by the Magistrate and his Assistants on members of their establishments.
- 117. List of officers below the rank of District Magistrates and Sessions Judges exercising Magisterial Powers.
- 118. Writs and letters calling for records and proceedings in original and appeal cases.
- 119. Notices given by the Sessions Courts and High Court of dates of hearing appeals.
- 120. Correspondence about transfer of criminal cases between Magistrates.
- 121. Correspondence about the examination of witnesses on commission.
- 122. Copies of Sessions Courts' findings.
- 123. Correspondence regarding cases referred to High Court for revision.
- 124. Correspondence regarding the execution of warrants of Sessions Courts for the execution of condemned prisoners.
- 125. Notices regarding criminal appeals received from the Sessions Court and from First Class Magistrate having appellate powers.
- 126. High Court letters calling for Second and Third Class Magistrates' returns.
- 127. Letters forwarding cases for orders of the High Court

At once.

- 128. Duplicates of Police Superintendents' weekly diaries.

129. Monthly return of cases and persons awaiting trial received from the District Police officers.
130. Monthly statement of appointments, promotions and reductions in the Police force, submitted by the Superintendents of Police.
131. Duplicates of monthly Police crime report.
132. Quarterly return of escape of prisoners.
133. Returns under the European Vagrancy Act.
134. Yearly statement of rewards for capture of prisoners.
135. Annual report on the examination of Birth and Death Registers.
136. Reminders.
137. Cancelled certificates granted under Section 9 of the Bombay District Police Act, VII of 1867.
138. Memoranda transmitting Acts and Regulations.
139. Returns and reports about the destruction of prickly pear.
140. Correspondence regarding contingent bills of the Police Department.
141. Draft notifications for grant of Magisterial powers.
142. Correspondence on the subject of inviting tenders for the supply of provisions to the Jails.
143. Letters appointing First Class Magistrates to carry out the weekly inspection of the District Jails required by the Jail Act.
144. Intimation about the quarterly meeting of the visitors of the District Jail.
145. Reports of deaths among convicts.
146. Correspondence about the issue of Tonga licenses.
147. Correspondence regarding the preparation of the annual lists of Assessors and Jurors.
148. Memoranda and letters regarding the supply of Magisterial cases and other papers to the Examination Committee, Bombay.
149. Intimation received from prisoners in the District Jail regarding their intention of appealing against the sentences awarded to them by Magistrates.

150. Copies received from the Superintendent, District Jail, of his reports regarding escapes of prisoners from the Jail.
151. Lists of persons appearing for the Magistrates' examinations.
152. Half-yearly returns of stipendiary officers who have been dismissed from their appointments under the District Magistrate.
153. Half-yearly returns of the average time that elapsed between the period of apprehension and trial and committal of accused persons.
154. Annual returns showing the fines levied under Section 19 of Regulation XII of 1827 and Act XXI of 1841 and the manner in which they are appropriated.
155. Annual return of fines collected in the Huzur and the district during the year.
156. Statement of regulars and irregulars employed on outpost duties for preserving the public peace.
157. Statement showing the time that elapsed between the apprehension and transmission of offenders.
158. Statement of notices under Section 518 of the Criminal Procedure Code applied for by the Police Superintendents.
159. Memorandum forwarding contingent bills submitted by the principal Collector to the Registrar, Sadar Fouzdari Adalat.
160. Passports issued to travellers.
161. Copies of reasons for committal of cases to Sessions Courts submitted by Magistrates to District Magistrates.
162. Register of prisoners known or reasonably suspected to belong to the class of habitual offenders confined in the District Jail or convict gang.

vi. No Magisterial records other than those mentioned above are to be destroyed.

(See *Government Gazette* for 1891, Part I, pages 1021 to 1025).

C.

PRESIDENCY MAGISTRATES' COURTS.

i. The Records of trials by Presidency Magistrates should be destroyed after the expiration of six years from the date of disposal, with the exception of the charge, finding and sentence.

ii. The Record of Judgments under Section 370 should be destroyed after six years.

iii. Care should be taken that no cases are destroyed which are likely to be required for the conviction of offenders still at large or for the identification of stolen property still undiscovered.

iv. The undermentioned papers being in, or belonging to, the Courts of the Magistrates are to be destroyed as follows :—

After twelve years.

1. Proceedings taken in connection with petitions for maintenance under Section 488 of the Criminal Procedure Code, with the exception of the petition and the final order.
2. All papers relating to the disposal of suspicious property under Section 524 of the Criminal Procedure Code, of property produced in Criminal cases, and all reports and returns regarding the sale of unclaimed property.
3. Warrants for recovery of fines.
4. Register of ownerless property.
5. Register of warrants handed over to the Chief Constable for recovery of fines.

After seven years.

6. Deeds of apprenticeship under Act XIX of 1850.

After six years.

7. Orders of the High Court on Appeal, Reference or Revision.
8. Charges in Warrant cases tried under Sections 362 and 370, Criminal Procedure Code.

After five years.

9. Papers relating to naturalization of foreigners.
10. All applications for warrants for the arrest of persons selling opium, &c., without a license, as well as any other papers bearing on the subject.

After three years.

11. Quarterly return of pending cases submitted to the Registrar, High Court.
12. Tabular statements showing the working of the Revenue and Magisterial Courts submitted yearly to the High Court.
13. Abstract of criminal appeal returns. Memoranda forwarding to the Magistrates concerned extracts from the remarks made by the High Court on the Criminal and appeal returns of the Magistrates.

After two years.

14. Annual Judicial Statements and papers. Complaints of offences and reports by Police thereon under Section 202, Criminal Procedure Code.
15. Criminal complaints dismissed.
16. Summonses and reports of the service of summonses.
17. Miscellaneous returns and reports.
18. Applications for copies of complaints, Judgments, &c., and replies.
19. Copies of orders under Section 167, Criminal Procedure Code.
20. Indents for the supply of printed forms.
21. Indents for Peons' clothing.
22. Miscellaneous papers in cases committed to the High Court.
23. Lists of papers sent to the High Court and all correspondence thereon.
24. Orders for the appearance of persons whose attendance is required, and correspondence thereon.
25. Receipts from Jailors for the admission of prisoners in Jails.
26. Papers regarding prisoners sent to Native States.
27. Circular orders cancelled by fresh circulars and not constantly in use.
28. Letter delivery books.
29. Miscellaneous papers relating to Criminal cases.
30. Statements of fines paid into the treasury, or sent to the Municipality, or Port Trust, or the Society for the Prevention of Cruelty to Animals.

31. Account books of Contingent Charges, Contingent Bills, Batta Bills, and correspondence relating thereto. Bills for water-supply, Bills for Book-binding, Memo. of fines received by Jailors, and Receipts for permanent advances..
32. Register of process fees received.
33. Reports about the recovery of Municipal taxes.
34. Reports on Railway accidents.
35. Monthly return of fines inflicted and recovered in Criminal cases.
36. Correspondence regarding service of summonses in Native States.
37. Correspondence regarding the extradition of accused persons.
38. Warrants of arrest and returns by Police Officers.
39. Warrants of Imprisonment and Returns by Jailors after execution.
40. Warrants of whipping.
41. Search Warrants and Returns made to them.
42. Distress Warrants and Returns thereto.
43. Warrants for imprisonment in the Reformatory.
44. Bail bonds to appear in Court on specified date.
45. Correspondence about injuries to prisoners.
46. Proclamations calling on accused to appear.
47. Proclamations relating to unclaimed property.
48. Proclamations offering rewards.
49. Reports under the Age of Consent Act.
50. Reports on proposed legislation.
51. Letters forwarding money-order, and acknowledging receipts of money-orders and Transfer Receipts.
52. Budget Estimate and Budget grants.
53. Lists of articles sent to auction and prices realized.
54. Papers relating to audit of accounts and errors in accounts.

After one year.

55. Writs and letters calling for records and proceedings in original and appeal cases.
56. Correspondence about the examination of witnesses on commission.

57. Correspondence regarding cases referred to High Court for revision.
58. Letters forwarding cases for orders of the High Court.
59. Explanation of Magistrates on cases called for by the High Court.
60. Police charge sheets.
61. Letters forwarding summonses for service and warrants for execution.
62. Letters requesting gentlemen to appear for examination as witnesses.
63. Reports of publication of Proclamations.
64. Letters forwarding summonses and warrants for execution in Bombay.
65. Certificates by Police Surgeon of Lunatics with their Medical Histories and Notes.
66. Applications to Government to send Lunatics to Asylum and replies.
67. Certificates that lunatics have recovered.
68. Letters directing them to be sent up for trial.
69. Reports of deaths of lunatics, or applications for their discharge.
70. Declarations by Proprietors of Newspapers and papers relating thereto.
71. Declarations of age under Provincial Service Rules, &c., and for other examinations.
72. Receipts of rent from the Petition Writers.
73. Memos. of money sent to the Bank of Bombay.
74. Statements of Balance in Bank to credit.
75. Papers relating to repairs and alterations of Court buildings—Completion certificates—Statements of buildings occupied.
76. Correspondence in Municipal cases.
77. Indents for stores.
78. Letters stating that persons have licenses to import sulphur.
79. Attestations to Recruit Rolls.

80. Affidavits to change names.
 81. Jailor's reports that accused are confined under Coroner's Warrants.
 82. Correspondence with Shipping Master about claims made by seamen.
 83. Certificates of previous convictions.
 84. Regulation of Moharram and other processions.
 85. Sanctions to prosecute.
 86. Papers relating to the return of Exhibits.
 87. Applications for production of letters and telegrams from the authorities.
 88. Applications for postponement of cases and certificates of sickness.
 89. Applications claiming things taken under distress warrants.
 90. Orders for attendance of prisoners under Prisoners' Testimony Act.
 91. Letters forwarding uncurrent coins, &c., to Mint and replies.
 92. Memo. of fines collected during the month.
 93. Applications for compensations.
 94. Correspondence about the practice in different Courts.
 95. Papers relating to leave, promotion, acting allowance, &c., of clerks, and to their pensions, fines and extension of service ; statements of Establishments.
 96. Reports of receiving and giving over charge.
 97. Correspondence about the pay and allowance of Magistrates.
 98. Statement of fines sent monthly to Port Trust and to the Collector.
 99. Letters forwarding confiscated opium and spirits, &c., to the Collector and replies.
 100. Correspondence on the payment of rewards in Opium cases.
 101. Half-yearly Returns of cases under the Opium Act.
- At once.*
102. Returns under the European Vagrancy Act.

103. Reminders.
 104. Memoranda transmitting Acts and Regulations.
 105. Letters appointing Presidency Magistrates to carry out the weekly inspection of Jails required by the Prisons Act.
 106. Intimation about the quarterly meeting of the Visitors of the Jails.
 107. Intimation received from prisoners in the Jails regarding their intention of appealing against the sentences awarded them by Magistrates.
 108. Jailors' acknowledgments for orders on appeal.
 109. Permits to be received in Hospital as a *pauper*.
 110. Application withdrawing Municipal cases.
 111. Government Solicitor's inquiries if appeal should be defended by Counsel, and replies.
 112. Letters from Jailors acknowledging orders of High Court on appeal.
 113. Notices to Visitors to visit Work-houses and Lunatic Asylum.
 114. Applications to beat Battaki.
- v. No magisterial records other than those mentioned above are to be destroyed.

(Vide *Government Gazette* for 1898, Part I, pages 96 to 99).

D.

GENERAL RULES APPLICABLE TO ALL COURTS.

(a) In preparing the list of papers which is placed in each record before handing it to the Record-keeper, a star (*) shall be prefixed to the title and number of each document which, under any general or special rule, is to be permanently preserved. The papers themselves should, in each case, be similarly marked, and should be placed at the top of the bundle so as to be easily separable from the rest.

(b) The date of destruction of the unmarked papers is to be noted on the list, which shall be permanently preserved.

(c) Very great caution should be exercised that nothing may be destroyed but what the above rules authorize, and that no papers of the following descriptions are destroyed :—

Papers relating to public revenue.

Accounts, or copies of accounts, of revenue management of, or connected with alienations of revenue by, this or former Governments.

Title-deeds of, or relating to, immoveable property, or authenticated copies of the same.

(d) In Sessions Courts the selection of records for destruction shall be commenced at the beginning of each vacation of the District Court and be continued *de die in diem* (excepting close holidays) until the work is completed. A sufficient number of the members of the establishment of each Court should be refused leave during the vacation until all records selected and fit for destruction have been destroyed.

(e) The destruction of useless records should be effected by tearing them into very small pieces, which should be sold to the highest bidder, or burnt, if no one bids at the sale.

119. Rules regarding copying fees in Criminal Courts :—

i. No fee should under any circumstances be taken for any copy which the person receiving it is by law entitled to receive *gratis*.

ii. All copies should be not merely correct, but should also be made in a clear clerk's hand. Copies should be written on substantial paper and on the outer three-quarter margin only of sheets of foolscap paper, the inner one-quarter margin of every sheet being left blank.

iii. The Sessions Judge, or the District Magistrate, should prescribe the fees to be charged for copying every kind of document in the Sessions Court or the Magisterial Courts, and may, if necessary, prescribe different rates of fees for different Courts : provided that the fees charged for copying shall not exceed the following rates :—

- (1) In the case of English copies, 6 pies for every 25 words, or fraction thereof.
- (2) In the case of vernacular copies, 6 pies for every 33 words, or fraction thereof.
- (3) In the case of certified copies an additional half anna per 100 words, or fraction thereof, for examining and comparing.

NOTE.—The same fees should be charged whether the copies furnished are handwritten or typed. When extra copies of the same document are taken by means of carbon paper, the typist should be paid double the usual fees, whatever the number of copies supplied, the amount recovered from the parties applying for the copies being credited to Government.

No fee beyond that prescribed for copying should be charged for searching Magisterial records.

iv. The fees for making each copy may be paid to the particular copyist by whom each document is prepared; or all the fees paid in each Court for copies collected during the month may be distributed, at the end of the month, at the discretion of the presiding Judge or Magistrate, amongst the persons employed by him as copyists.

v. Copies should not be made by paid members of the Court Establishment, unless no other persons competent to make them are available. The fees for copies so made shall be credited to Government.

vi. Copies should be compared only by members of the establishment during office hours and the fees levied for such work should invariably be credited to Government.

vii. Except when under any provision of law an applicant is entitled to receive a copy free of cost, or the Court orders it to be given free of cost, the applicant, if he does not furnish the paper required for making the copy, should be charged a quarter of an anna for each sheet of paper to be supplied by the Court.—(Vide *Bombay Government Gazette* for 1899, Part I, p. 184).

viii. The following Government Resolution in the Judicial Department is republished for information and guidance :—

Bombay Castle, 29th September 1899.

No. 6769.—In Home Department Circular, dated the 7th August 1868, the Government of India requested that instructions might be issued to the local

authorities that whenever a Government official is judicially convicted of any offence, a copy of the decision should be sent to the Head of the Department in which he is employed, in order that such action in the case, as may be deemed proper, may be taken at once. In their Circular letter of the 24th January 1899, the Government of India inquired (1) whether it is the practice in the several Provinces to supply free of charge copies of judicial decisions sent to Heads of Departments under the orders of 1868, and (2) whether there would be any objection to the issue of a rule to the effect that copies of judgments of acquittal and orders of discharge should also be supplied free of cost on the application of the Head of the Department in which the officer is employed. The replies to the Circular answer the first of these questions in the affirmative and the second in the negative.

2. The Governor General in Council is therefore pleased to direct that the existing practice of supplying free of charge to the Head of the Department concerned copies of judgments convicting Government officers of criminal offences shall be continued, and that in future copies of judgments of acquittal and orders of discharge shall also be supplied free of charge on the application of the Head of the Department.

120. In order to aid Appellate Courts in determining whether appeals are barred by limitation, every Criminal Court subordinate to the High Court shall cause to be endorsed the following particulars on every copy of a judgment, order, or charge to a Jury furnished under the provisions of Section 371 or 543 of the Code of Criminal Procedure :

The date on which the copy was applied for.

The date on which it was ready for delivery.

The date on which it was delivered.

To prevent unauthorized alterations being made, the dates should be written in letters in a distinct handwriting, and each endorsement should be signed by some responsible officer of the Court on the date to which it refers.

The particulars referred to in Circular 63 above, should always be set out in every copy of the documents referred to. (See *Government Gazette* for 1890, Part I, page 145).

121. By Government Resolutions, Judicial Department, No. 7320 dated 8th October, 1897, and No. 560 dated 21st January 1898, and No. 3472 dated 16th May 1898, Government have directed

that security to the amount of Rs. 200 shall be taken from clerks in Criminal Courts, who write the register of copying fees, and keep in their charge the money advanced. Every such clerk must execute in form XXII, XXIII, a bond to the amount of Rs. 200 with one surety in equal amount.

CHAPTER XI.

MISCELLANEOUS.

122. In the event of the absence of the Sessions Judge from a Sessions Division where there is not an Assistant Sessions Judge, the officer who, under the provisions of Section 35 of Act XIV of 1869, assumes charge of the District Court, shall take charge of the current duties of the Sessions Judge in so far that he shall transmit writs of the High Court to the Magistrates, forward proceedings in cases called for by the High Court, submit the usual criminal returns, and receive appeal petitions and committed cases.

123. The Sessions Judges and Additional Sessions Judges in forwarding records and proceedings to the High Court will observe the following rules :—

When the proceedings in Sessions cases are called for by the High Court, in all Districts except Ratnagiri and Kanara, the fair copies of the English Sessions proceedings and the English Magisterial proceedings shall be sent first and a second packet shall follow containing the rest of the Sessions and Magisterial proceedings as soon as intimation has been received of the safe arrival of the first packet. From Ratnagiri and Kanara the two packets should be despatched registered at intervals of three days.

When the proceedings are called for in original only the English and Vernacular papers shall be sent in separate packets at similar intervals.

124. Whenever any papers sufficiently bulky to require to be sent by parcel-post are sent to any Court, a separate letter should be sent by post advising it of their despatch.

The same plan will be adopted in the High Court, and in the event of any papers not being received within a reasonable time after the arrival of the letter announcing their despatch, the circumstances should be at once reported.

125. The returns and papers noted below may be forwarded to the High Court as set forth against each of them : —

- i. Criminal monthly and quarterly returns. To be forwarded by endorsement.
- ii. Copies of the reasons recorded under Section 367 of the Code of Criminal Procedure, forwarded to the High Court on appeal from the accused. Do. do.
- iii. Receipts for record and proceedings returned from the High Court. The receipts should only be signed and returned without a letter.

126. The District Magistrates should forward to the High Court, at the end of each quarter, general registers of letters to and from the Registrar of the High Court unreplied to, in the following forms. Similar returns for the Sessions Courts should be included in the registers submitted by the District Judges : —

Quarterly General Register of Letters to the High Court of Judicature unreplied to on the 19 .

Number and date of letter.	Subject.	Date of despatch.	Remarks.

Quarterly General Register of Letters from the High Court of Judicature unreplied to on the 19 .

Number and date of letter.	Subject.	Date of receipt.	Remarks.

127. The following rules are to be observed by all Courts in making remittances through the post. Sums of and over Rs. 2, whenever practicable, should be sent by money order. Sums under Rs. 2 should be sent in stamps. In order that stamps may not be damaged, they should be stitched to the accompaniment, and not gummed on to it. When postage stamps are sent, and the value of the stamps is sufficient to justify the expense of registration, parties should be recommended to register the letters with which the stamps are sent.

128. Commissions sent for execution to any place where the language is different from that of the Court issuing them, should be accompanied by translations in the language of such place, or in English (See *government gazette* for 1896, Pt. I, page 1104).

129. Courts in the Mofussil should transmit to Treasuries coins coming before them under Sections 517, 523 and 524 of the Criminal Procedure Code, together with a short description of the case and any implements, such as dies, moulds, &c., which may have been found, for being sent on by the Treasuries to the Mint through the Inspector General of Police. Courts in the Presidency town should transmit the same direct to the Mint through the Commissioner of Police, Bombay. (See *Government Gazette* for 1901, Part I, page 1365).

CHAPTER XII.

RETURNS AND REGISTERS.

A.

GENERAL RULES APPLICABLE TO ALL RETURNS.

i. Blank Returns should not be submitted. When there is no material for filling in any Return, a report to that effect will be sufficient.

ii. Ordinarily the required information will be entered in the appropriate column of each return, use being made, if necessary, of blank spaces in neighbouring columns; but where this does not afford sufficient room for long statements or explanations which have to be given, separate memoranda (lettered A, B, and so forth consecutively) may be appended to the Return, a reference in each case being noted in the proper column.

B.

MAGISTERIAL RETURNS.

1. The following Returns are required in each district:—

Return No. I, Monthly Criminal Return, in Form A at page 85, of Cases tried, committed for trial, discharged, or permitted to be withdrawn by District Magistrates and Magistrates of the First Class.

Return No. II, Monthly Return, in Form B at page 86, of Cases disposed of by the District Magistrates and Magistrates of the First Class under Chapter VIII B of the Criminal Procedure Code (security for keeping the peace in cases not provided for in Section 106 and security for good behaviour).

Return No. III, Monthly Return, in Form C at page 87, of Appeals disposed of by District Magistrates and Magistrates of the First Class empowered to hear appeals.

Return No. IV, Criminal Return, in Form A at page 85, *mutatis mutandis* of Cases disposed of by Magistrates of the Second and Third Classes.

Return No. V, Quarterly Return, in Form D at page 88, of Pending Cases, showing the persons in custody or on bail for any offence, under the orders of the Magisterial Authorities.

Return No. VI, Monthly Return, in Form E at page 89, of Recognizances declared forfeited by Magistrates other than the District Magistrate.

II. The Returns Nos. I, II, III and VI of First Class Magistrates shall be forwarded to the District Magistrate not later than the 5th of each month. The District Magistrate shall, after making any remarks on them which he may think requisite, send them on (with the exception of Return No. VI) along with his own Returns to the Sessions Judge not later than the 15th of each month. In case of longer delay being unavoidable, a detailed report should be made explaining the cause of delay. In order to secure accuracy and punctuality with regard to the Returns, each Magistrate should keep a calendar book with the same headings as Form A, and enter up the particulars of each case immediately on its being disposed of. It will then only remain to have a fair copy made at the end of the month.

III. On receipt of these Returns the Sessions Judge will examine them in order to see whether any action is required under Section 435, Criminal Procedure Code, and will forward them to the High Court as quickly as possible without remark except a note of any case called for under this Section. The Returns need not be accompanied by a letter, but the Sessions Judge will note upon them the date of receipt and of despatch by himself, and the cause of any delay exceeding fifteen days in his own office.

The explanations submitted by Magistrates on Resolutions of the High Court on their Criminal Returns, should be sent direct to the High Court by the District Magistrates unless otherwise specially ordered. (High Court Circular No. 1973 dated 26th November 1892).

IV. There is no objection to the original Returns of the First Class Magistrates being sent up. In this case they should be stitched together in proper order, the general numbers being inserted under the direction of the District Magistrate. When the District Magistrate sends up the original Returns, he need not retain copies for his own office.

FORM A.

MONTHLY CRIMINAL RETURN OF Cases tried, committed for trial, discharged or permitted to be withdrawn by
in the District, during the month of 19 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
No. of Case.	Names of accused persons.	Age.	Race, Religion or Caste.	Abstract of circumstances constituting the alleged offence.	Date on which offence was committed.	Date and hour of apprehension by the Police.	Date of forwarding accused to Police Station.	Date and hour of arrival before Magistrate having jurisdiction.	Explanation of detention by the Police.	In custody, on bail, or on personal recognizance.	Abstract of conviction and sentence or other order in the case.	On what date decided.	By whom decided and where.	Explanation of delay before Magistrate.	Remarks.	Remarks by District Magistrate.	Cases called for by Sessions Judge.

Forwarded by the First Class Magistrate to the District Magistrate { Forwarded by the District Magistrate to the Sessions Judge {
on the of 19 . } to the Registrar of the High Court on the of 19 .

First Class Magistrate.

District Magistrate.

Sessions Judge.

FORM B.

MONTHLY RETURN of Cases under Chapter VIII B. of the Criminal Procedure Code disposed of by _____ in the _____ District, during the Month of _____ 19 _____.

I	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
No. of Case.	Name.	Age.	Race, Caste, Religion, or	Occupation.	Residence.	Date of apprehension.	Date of forwarding accused to Magistrate having jurisdiction.	Date of arrival before Magistrate having jurisdiction	Explanation of detention by Police.	Ground for requiring security or for forfeiting security.	Nature of security required or forfeited or other order made.	Date of Decision.	By what authority.	Remarks.	Remarks by District Magistrate.	Remarks by Sessions Judge.

Forwarded by the First Class Magistrate to the District Magistrate on the _____ of _____ 19 _____.

Forwarded by the District Magistrate to the Sessions Judge on the _____ of _____ 19 _____.

First Class Magistrate. District Magistrate. Sessions Judge.

MONTHLY RETURN of Appeals disposed of by
the District, during the month of

Forwarded by the First Class Magistrate to the District Magistrate on the _____ of 19 .

Forwarded by the District Magistrate to the Sessions Judge on the _____ of 19 .

Sessions Judge.

QUARTERLY RETURN of Pending Cases showing the persons in Custody or on Bail for a longer period than one month for any offence, under the orders of the Magisterial authorities, on the 19, in the District of

55

District Magistrate.

FORM E.

1-2 *RETURN of Recognizances declared forfeited during the month of* *by* *Magistrate,* *Class,*
District.

1	2	3	4	5	6
No. of Case.	Name of the person subject to forfeiture.	Purpose of the recognizance and date.	Abstract of the order made.	Amount realized under the order and from whom.	Remarks.
	P* S				

* Principal
Surety.

Magistrate, *Class.*

The following instructions are to be carefully attended to in filling up the foregoing Returns:—

RETURN No I. (FORM A.) MONTHLY CRIMINAL RETURN OF CASES TRIED, COMMITTED FOR TRIAL, DISCHARGED, OR PERMITTED TO BE WITHDRAWN BY THE DISTRICT MAGISTRATE AND MAGISTRATES OF THE FIRST CLASS.*

* I. Cases in which a conviction is recorded, but no sentence passed, should be entered in the proper Return: for example, cases under Act XIII of 1859, in which fulfilment of contract is ordered, but no sentence of imprisonment pronounced. Cases under the Cattle Trespass Act of 1891 should also be entered in the Return.

II. Cases which are compounded before the accused comes before the Court need not be entered in the return.

III. Cases falling under the following descriptions need not be entered in full in Return No. I (Form A), but the number of cases under each head of the description disposed of during the month should be entered at the foot of the return in column 2, the law and section applicable and the method of disposal of each such set of cases being entered in columns 5 and 12, respectively, and all other columns remaining blank:

(a).—Cases of offences under the Indian Penal Code which are compounded, not being such as are compoundable only with the permission of the Court.

(b).—Cases of offences under:

i.—Bombay Act VI of 1863.

ii.—Rules under Sections 25, 26, and 27 of the Cantonments Act XIII of 1889.

iii.—Bombay Act IV of 1890, Section 61.

iv.—Bombay Act VI of 1873.

In which (a) the accused is acquitted or discharged, or (b) a sentence of fine only of less than one rupee is passed.

(c).—Cases under Act XIII of 1859, in which (a) the accused is discharged, or (b) the complaint is withdrawn.

This exception does not apply to cases in the disposal of which there has been a delay of more than fifteen days, or to cases in which the accused has been detained in custody for more than twenty-four hours before coming before the Magistrate for trial, or to cases in which any order is made under Section 250 or Section 545 of the Criminal Procedure Code. All such cases must be entered serially, as hitherto, with the necessary explanation.

IV. Appeals under Section 86 of the Bombay District Municipal Act of 1901 need not be entered in this return.

(a) *Col. 1.* This column should show in the form of a fraction the number of the case, both in the General Return of the District and in the Return of the Magistrate who disposed of the case. Thus $\frac{25}{6}$ will mean that the case is No. 25 in the General Return, and No. 6 in that of the Magistrate who disposed of the case. The numbers in the General Return should run consecutively from the 1st January to the 31st December in each year and should form the numerators of the fraction.

(b) *Col. 2.* "Names of Accused Persons." The numbering in this column should correspond with the numbering used in the charge at the time of trial, or, if no charge has been framed, with that used in the Magistrate's proceedings.

(c) *Col. 4.* "Race, Religion, or Caste." In the case of a Hindu, his caste only need be given; the vernacular name of the caste, and not a translation, should be given. In the case of a Musalman, his religion, and, if necessary, his tribe or sect should be given, *e. g.*, Pathan, Mogul, Khoja, Borah. If the accused is a European British subject, the fact should be noted in this column; and if his name indicates British extraction, but he is not a European British subject, it should be made clear to what race he belongs. In the case of other Europeans, Americans &c., their nationality and religion should be stated.

(d) *Col. 5.* "Abstract of circumstances constituting the alleged offence."

The entry in this column should be in three parts:—

(1) *The name of the alleged offence* expressed concisely in terms of the enactment declaring it to be an offence. In cases in which, as in the Penal Code, a name is given to the offence in the margin of the enactment, such name may appropriately be given *mutatis mutandis*. Where a charge has been framed, the offences described in this column should be those named in it; in other cases those named in the complaint or Police report.

(2) *A brief abstract of the criminating circumstances* alleged against the accused. This abstract should relate in ordinary (not technical) language, sufficient of the alleged facts to bring

the case within the definition of the offence alleged. It should also, if necessary, give briefly information conveying an idea of the gravity of the offence: for instance if the offence be theft, the probable value of the property stolen should be stated; if voluntarily causing hurt, the weapon or other means by which the hurt was caused, and the nature of the injury inflicted, should be specified; when it is alleged that the accused was legally bound to do something, the law should be referred to under which he was so bound.

(3) Below this abstract, the *section of the law* under which the alleged acts are punishable should be given; thus in a case of theft, Section 379, Indian Penal Code, should be quoted.

(4) When a previous conviction is necessary to justify any particular sentence or order which otherwise could not have been passed *e. g.*, when whipping is awarded as an additional punishment or when a case is committed to the Court of Session which, in the absence of previous convictions, the Magistrate would have tried himself, the particulars should be entered in Column 5.

Exception.—When an accused person is sentenced to imprisonment not exceeding seven days or to fine not exceeding Rs. 10, or is discharged under Sections 209, 253 or 259 of the Code of Criminal Procedure, or is acquitted under Sections 245, 247, 248, 258 or 345 of the same Code, it will be sufficient to enter in this column only the section of the law under which the alleged act is punishable.

(e) *Col. 7.* “Date and hour of apprehension by the Police.” When arrest without warrant has been made by the Village Police, the letter V should be entered in this column; when by the District Police, the letter D; when by the Railway Police, the letter R; and when by officers other than the Village, District or Railway Police, acting under the Salt, the Opium, the Abkari or other special Act, the official title of such officer. In cases where accused has been liberated after his first apprehension and re-arrested, the date and hour of both arrests and of liberation should be shown.

(f) *Cols. 7 and 8* will be blank when S or A is entered in column 9.

Col. 8 will ordinarily be blank when W is entered in col. 9, if col. 11 shows that the accused was released on bail or personal recognizance by the Police. It is wrong to show a person who is on bail as forwarded by the Police.

The law provides that no Police officer shall detain in custody a person arrested without warrant for a longer period than is reasonable, and such period shall not, in the absence of a special order from a Magistrate, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Columns 7 and 9 furnish the information required. The maximum period of 24 hours is to be counted from the time of arrest (as the law requires) not from the date of despatch from the Police Station. Col. 8 of the Return need not be filled in except in the few cases where arrest is made by the village Police and the accused is forwarded by them to the Police Station. In Cols. 7 and 9 not only the date but the hour also of the arrest as well as of the arrival of the accused before the Magistrate should be shown.

Similar entries in Columns 7 and 8 of the Return, Form B, Chapter VIII B, at page 86 of the Criminal Circular Order Book, should also show the hour as well as the date required. (High Court Circular No. 2418 dated 29th November 1900).

(g) Col. 9. "Date and hour of arrival before Magistrate having jurisdiction." The date and hour to be entered in this column is that on which the accused person is brought finally before the Magistrate having jurisdiction, so as to continue thenceforward under his cognizance, and not a date on which the accused person may be brought before him merely to be remanded to Police custody under Section 167, Criminal Procedure Code. When the attendance of the accused has been obtained by warrant, by summons, or by arrest under the personal order of a Magistrate, this should be shown by entering the letter W, S, or A, respectively, in this column. When in a case in which a summons has issued, a period of more than two months is shown to have elapsed between the date in col. 6 and that in this column, the dates of the complaint and of the issue of process should be written across the

blank space between the two columns, any explanation which may be necessary being given in col. 16.

(h) Col. 10. "Explanation of detention by the Police." Under this heading the following points are to be noticed:—

(1) *Explanation of any undue delay between the dates shown in cols. 7 and 8, or in cols. 7 and 9, when 8 is blank.*

Note.—(a) When the arrest has been made by a Police Patel, the accused must be forwarded within 24 hours to the District Police Station (Bombay Act VIII of 1867, Section 12, cl. 2), so that any delay exceeding 24 hours must in such case be explained. (b) When the arrest has been made by a District Police Officer not authorized to make an investigation, the person arrested must be forwarded "without unnecessary delay" to a Magistrate having jurisdiction or to the officer in charge of the Police Station, (Criminal Procedure Code, Section 60), and explanation is required to show that whatever delay occurred in such case was necessary.

(2) *Explanation of delay in excess of 24 hours between the dates shown in cols. 7 and 9.*

Note.—(a) When a special order for detention has been obtained from a Magistrate, under Section 167 of the Code of Criminal Procedure, it is necessary to state the date on which the accused was sent to such Magistrate, whose name and powers should be given. (b) When the order does not authorize detention for more than 48 hours in excess of the 24 hours allowed by law to the Police, the reasons for it need not be stated. But when an accused person is detained by the Police more than 48 hours under a special order, detailed explanation should be given in this column of the Magistrate's reasons for granting the special order. But in all cases sufficient explanation must be given to show that the rules laid down in Sections 3 and 6 of Chapter I above have been complied with.

(3) It is the duty of the Magistrate, who disposes of the case, to see that *the time occupied in transmitting accused persons to the Police Station or the Magistrate* is reasonable, with reference to the distance to be traversed and other local considera-

tions. If more than a day is occupied in travelling, the distance travelled should be stated across the columns below the dates which show the time occupied in the journey. When the time occupied appears *prima facie* unduly long, explanation should be given in this column.

(4) Where there has been *illegal detention*, it should be stated what steps have been taken to prevent a repetition of the illegality.

(i) Col. 11. "In custody, on bail, or on personal recognizance." The information given in this column should extend from the arrest or first appearance, as the case may be, of the accused to the date entered in col. 13, showing the dates of any changes which may have occurred in the meanwhile. When an accused person has been arrested and released on bail or personal recognizance, the date of such release should always be given. When the accused appeared in answer to a summons, and the case was disposed of the same day, it should be so stated. When an accused person is in custody for a bailable offence, or on bail, or personal recognizance for a non-bailable offence, the reason should be stated.

(j) Col. 12. "Abstract of conviction and sentence, or other order in the case." This column should show the decision come to as regards each accused person as to each offence described in col. 5. When an accused person is convicted, or committed to the Court of Session, the section under which the offence for which he is convicted or committed is punishable should be quoted. When an accused person is acquitted or discharged, the section of the Code of Criminal Procedure should be quoted under which the acquittal is recorded or the discharge ordered. In all cases the order should be stated in terms of the Act quoted and when a fine is imposed it should be stated whether or not it is paid.

(k) Col. 14. "By whom decided and where." The name and office of the deciding officer should be given. The letters J. P. should be entered when it is necessary to show that the deciding officer is a Justice of the Peace. Where special authority

is required to give jurisdiction (as under certain special laws), the letters S. A. should be entered.

(l) Col. 15. "Explanation of delay before Magistrate." Explanation showing the reasons for adjournments, the dates and other details should be given when there has been a delay of more than 15 days from the date entered in col. 9, whether the accused person was in custody or on bail.

(m) Col. 16. "Remarks." Any explanation that may be necessary of the apparent leniency or severity of a sentence, and of delay in issuing summons or in arresting the accused should be given here. When a case has been tried summarily, the letters S. T. should be entered in this column.

RETURN No. II (FORM B.) MONTHLY RETURN OF CASES DISPOSED OF BY THE MAGISTRATE OF THE DISTRICT OR MAGISTRATES OF THE FIRST CLASS UNDER CHAPTER VIII B OF THE CRIMINAL PROCEDURE CODE (SECURITY FOR GOOD BEHAVIOUR).

This return should show every case during the month in which (1) security has been taken, (2) a person has been imprisoned in default of furnishing security, (3) a security has been forfeited, (4) a person has been brought before the Magistrate in order that security might be taken, but has been discharged. One or other of these modes of deciding the case should be shown in col. 12. In col. 10 explanation should be given when there has been a detention by the Police of more than twenty-four hours, and in col. 15 when there has been a delay of more than 15 days before the trying magistrate. In column 11 the section under which the security is required or forfeited should be stated.

RETURN No. III. (FORM C.) MONTHLY RETURN OF ALL APPEALS OF WHATEVER DESCRIPTION DISPOSED OF BY DISTRICT MAGISTRATES AND MAGISTRATES OF THE FIRST CLASS EMPOWERED TO HEAR APPEALS.

(a) In Col. 1, the appeals should be numbered in the way prescribed for entering the numbers of cases in col. 1 of Return No. I.

(b) In Col. 4, a statement should be added in cases in which the sentence passed awards imprisonment in default of payment of fine, showing whether the fine has been paid or not.

(c) Col. 8. When an appeal is rejected under section 421 Criminal Procedure Code, the words 'dismissed summarily' should be entered in this column. When an Appeal is dismissed under Section 423, the entry should be 'Appeal dismissed.' If an appeal is dismissed as time-barred; the entry should be 'dismissed time-barred.'

(d) In Col. 10, explanation should be given when the appeal is received more than 30 days from date of sentence and also when more than a month elapses between date of appeal and date of decision.

RETURN NO. IV. CRIMINAL RETURN OF CASES DISPOSED OF BY MAGISTRATES OF THE SECOND AND THIRD CLASSES.*

(a) A vernacular calendar of every case in which a conviction has been recorded by a Magistrate or Bench of Magistrates of the second or third classes, shall be submitted in the Form A (*mutatis mutandis*) to the District Magistrate within twenty-four hours from the time of passing sentence, in order that he may at once take measures for rectifying any injury done by an illegal sentence.

(b) A monthly Return of all other cases disposed of by such Magistrates or Bench of Magistrates shall be submitted in a similar form to the District Magistrate through the Magistrate of the subdivision (if any), who will forward it after making such remarks (written in English) as may appear requisite.

(c) In order to satisfy itself that the duty of supervision is properly performed, the High Court will, from time to time, call for a Return of all the cases decided by the Magistrates or Bench of Magistrates of the second and third classes in each district or portion of a district within a particular month. This Return will be prepared in English by the District Magistrates from the

* Note.—Paras I, II and IV of the foot note on page 90 apply to this Return: Para III of the foot note, and the Exception to Column 5 on page 92 do not apply.

calendars of convictions and the monthly returns furnished by such Magistrates or Benches of Magistrates, and will contain all the cases disposed of by them, and also the remarks (if any) made by the Sub-Divisional Magistrate (whose name should be shown) and by the District Magistrate. For convenience of reference the cases should in addition to, or substitution for, any number they may have borne in the original Calendar or Return, bear a consecutive number, the first case entered being No. 1 and so on.

RETURN No. V (FORM D). QUARTERLY RETURN OF PENDING CASES SHOWING THE PERSONS IN CUSTODY OR ON BAIL FOR ANY OFFENCE UNDER THE ORDERS OF THE MAGISTERIAL AUTHORITIES.

(a) This Return will be submitted to the High Court by the District Magistrate; and explanation should be given in all cases pending for more than one month. The cases will be numbered consecutively for each quarter, each case being separately entered. Remarks should be referred to the proper cases by the intersection of the horizontal and perpendicular columns: thus 2 | 9 would indicate case No. 2 as shown in col. 9.

(b) This Return should show the following:—

- (1) Persons in custody under the orders of a Magistrate.
- (2) Persons whom a Magistrate has admitted to bail.
- (3) Persons for whose detention a Magistrate has issued a special order under Section 167 of the Criminal Procedure Code.

(c) When in any case a sub-division of a district shall be constituted (*vide* Section 8 of the Criminal Procedure Code,) the Magistrate in charge of such division will for the purposes of this Return, stand in the place of the District Magistrate so far as his sub-division is concerned; but he shall send his Return to the Sessions Judge for transmission to the High Court.

Note.—The Return in the same form (with the omission of Column 16) will also be submitted to the High Court by the Chief Presidency Magistrate, Bombay, for his own Court and the

Courts of the other Presidency Magistrates, a brief explanation of the causes of delay being given in Column 15 with respect to each case, and when a case has been pending more than 4 months, the date and period of each adjournment and the reasons for it being noted (G. R., J. D., No. 3036 dated 11th June 1888, and Errata Nos. 3316 and 4130 dated 27th June and 31st July 1888.)

RETURN No. VI (FORM E). RETURN OF RECOGNIZANCES.

All Magistrates should forward monthly to the District Magistrate a Return, in this form, of the recognizances declared forfeited by them during the month. This Return need not be sent to the Sessions Judge or to the High Court.

SESSIONS JUDGES' RETURNS.

i. The following Returns are required in each Sessions Division :—

Return No. i, Monthly Return in Form F at page 101 of Cases decided by the Court of Session.

Return No. ii, Monthly Return in Form G of Appeals disposed of by the Sessions Judge and Joint Sessions Judge (if any).

Return No. iii, Quarterly Return in Form H showing the number of cases and persons before, the results of trial in, and appeals disposed of by and pending in, the Court of Session.

ii. Returns Nos. i and ii should be submitted as soon as possible after the end of each month, and should in no case, but one of inevitable necessity, be delayed beyond the 15th of the month after that to which it relates. In case of longer delay being unavoidable, a detailed report must be made explaining the cause of delay.

iii. Unless when it may be necessary to report causes of delay in submitting the Returns under Rule I they are not to be accompanied by a letter.

FORM F.

Return of Criminal Cases decided by the Sessions Court of 19 *during the month of*

No. of Case.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	Remarks.
Numbers of accused persons in each case.																		
Names.																		
Age.																		
Caste.																		
Occupation.																		
Residence.																		
Abstract of crime or charge.																		
Offence where committed.																		
Date on which the offence was committed.																		
Date of appearance or apprehension.																		
Authority by whom committed, and date of commitment.																		
Date of receipt by Sessions Judge.																		
In confinement or at large on bail.																		
Abstract of the conviction and sentence or decision in each case.																		
By whom decided, and date of decision.																		

Return of Appeals disposed of by the Sessions Court of

19.

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FORM H.

Quarterly Return showing the number of cases and persons before, the results of trial in, and appeals disposed of by and pending in, the Court of the Sessions Judge of
Quarter of 19 .

No. of General Calendar.	Offence.	Cases committed for trial.							No. of appeals.		Remarks.
		No. of persons in each case.				Sentence passed.	Date of commitment.	Date of decision.	Disposed of.	Pending.	
		Under trial.	Acquitted or discharged.		Convicted.						
			In cus- tody.	On bail.							
1	2	3	4	5	6	7	8	9	10	11	12

The following instructions are to be carefully attended to in filling up the foregoing Returns:—

Return No. i. (Form F). Monthly Return of Cases decided by the Sessions Court.

(a) *Col. 1, "Number of Case."* This column is to contain the number of each case entered in the returns, commencing from the 1st of January and continuing in consecutive order till the 31st of December in each year. The cases are not to be entered according to date of decision consecutively throughout the month, but in groups showing together, in order, according to date of decision, all the cases decided by the Sessions Judge, and the Joint and Assistant Sessions Judges (if any) respectively. For instance, Nos. 1 to 5 of the Return may show the cases decided by the Sessions Judge, Nos. 6 to 10 those decided by the Assistant Sessions Judge at the Sadar Station, Nos. 11 to 15 those decided by the Joint Sessions Judge at the detached station.

(b) *Cols. 2 @ 11.* The instructions given above for making the entries in the corresponding columns of Magistrates' Return No. I are to be followed.

(c) *Col. 14, "In Confinement, or at large on Bail."* The information in this column is to extend from date of commitment to date of decision, with the dates of any changes that may have occurred in the meanwhile.

(d) *Col. 15, "Abstract of the Conviction and Sentence or Decision in each case."* This column should show the decision come to as regards each accused person as to each offence described in col. 8, and below it the section of the Act authorizing each portion of the sentence or decision. When any combined punishment is awarded which requires the authority of more than one enactment, each should be quoted. Should the accused be convicted of any offence not mentioned in col. 8, the offence found proved should be shown in this column, with any necessary explanation.

(e) *Col. 16, "By whom decided, and date of decision."* The name and office of each deciding officer should here be given. In jury cases the entry should be A. B. Esquire, Sessions Judge, and a jury. In cases in which the sentence passed is subject to

confirmation by the Sessions Judge, the date of the original sentence, and the date of the final order of the Sessions Judge, must both be entered; such cases, therefore, will not be shown in the Returns till decided by the Sessions Judge.

(f) Col. 17, "Remarks." In this column should be entered any previous convictions against the prisoners; the cause of delay in bringing the prisoners to trial, if any such delay have taken place; the reason, on a conviction for murder, for not passing a capital sentence, or any particular reasons for giving a lighter or heavier punishment than ordinary, or any other information with which it may seem well that the Judges of the High Court should be made acquainted.

When, however, a previous conviction is necessary to justify a particular sentence, such previous conviction, with its date, the extent of the punishment, and the section of the Penal Code or other law should be entered in Col. 8 as forming part of the charge (Criminal Procedure Code, Section 221), and such entry need not be repeated in Col. 17.

(g) iv. Below the Return should be given an abstract showing by whom the prisoners tried during the month were committed, as follows:—

Abstract.

By whom committed.	Convicted.	Acquitted.	Pardoned.	Total No. committed.
Mr. A., Magistrate of B.	2	...	1	3
Mr. C., Magistrate, F.C.	3	2	...	5
Mr. D., Magistrate 2nd Class, P. C.	5	1	1	7
(And so on).				

(h) A memorandum as follows should also be given:—

Criminal cases before the Sessions Judge undisposed of.	2
Ditto Assistant Sessions Judge undisposed of	... 3

Number of cases for submission to the High Court for					
confirmation				...	2
Ditto	ditto	called for by precept	...	...	4
Ditto	ditto	ditto by the Assistant Sessions Judge			0
Ditto	reviewed on appeal	...	...	...	0

Return No. ii. (Form G) Monthly Return of Appeals disposed of by the Sessions Judge and Joint Sessions Judge.

The instructions given for filling Magistrates' Return No. iii should be followed.

Return No. iii (Form H) Quarterly Return showing the number of cases and persons before, the results of trial in, and appeals disposed of by and pending in, the Sessions Court.

Col. 2. When an accused person is acquitted and discharged, the charge on which he was tried should be stated here, and in case of conviction that on which he was convicted.

Cols. 3. and 4. Explanation should be given as regards persons under trial for more than a month.

D.

REGISTERS.

i. A Register of fines shall be kept in all Criminal Courts in the following Form I. A new Register shall be commenced at the beginning of each year in which cases wherein fines remain still unrealized from previous years shall be entered before the cases of the current year. The balance of fines unrealized need not be entered when the limit prescribed in Section 70 of the Indian Penal Code has expired.

" When fines inflicted on prisoners are recovered, intimation of the same should always be given by Magistrates to the Jail authorities in Form J at page 109 of the High Court Criminal Circular Order Book. (*Vide Bombay Government Gazette for 1897, Part I, page 553.*)

ii. Compensation awarded to the accused under Section 560 of the Code of Criminal Procedure should be entered in the Register of Fines, Form I, prescribed at page 108 of the High Court Criminal Circular Order Book. The word 'convict' in the heading of Column 2 of the form should be altered to 'person fined'. (*see Government Gazette for 1896, Part I, p. 1178.*)

FORM I,

Register of Fines in Criminal Cases in the Court of

for the year 19

Calendar No.	Name of convict and place of residence.	Punishment and section of the Law.	Date of Sentence.	Amount for collection.	Realizations.												Balance due at the end of the year.	No. of Refund Order.	Date of issue of Refund Order.	Amount ordered to be refunded	Initials of Magistrate or other Head of Office.	Remarks.
					January.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	Total.					
7	Tamana bin Rayapa of Arbhari	Two months' rigorous imprisonment and fine of Rs. 50, under Section 380, I. P. C.	5th Nov. 1875.	50	..	..	..	..	..	..	..	..	..	..	10	40	50	..	..	..	..
11	Gopal bin Hirachand of Poona.	Six months' rigorous imprisonment and fine of Rs. 100, under Section 379, I. P. C.	7th July 1876.	75	..	..	..	..	..	..	25	..	..	..	..	..	25	50	..	..	..
1	Rama bin Tukar a m of Gokak.	Fine of Rs. 20, or, in default, to undergo 8 days' rigorous imprisonment, under section 323, I. P. C.	5th Jan. 1878.	20	15	..	..	..	..	..	..	..	..	..	..	..	15	5	..	..	..	The complainant was paid Rs. 10 out of the fine, and the balance credited to Government.
					..	..	..	..	..	..	..	..	..	..	..	..	..	55	..	..	..

ii. The following three Forms (J, K, L,) of Criminal Registers should be used by all Courts of Session :—

FORM K.

Register of Criminal Cases decided by the Sessions Judge (or Joint Sessions Judge or Assistant Sessions Judge) of

No. of Case.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
		Number of prisoners in each case	Name.	Age.	Caste.	Occupation.	Residence.	Abstract of crime or charge.	Offence where committed.	Date on which the offence was committed.	Date of apprehension or appearance.	Authority by whom committed and date of commitment.	Date of receipt by the Sessions Judge.	In confinement or on bail.	Abstract of the conviction and sentence and decision in the case.	By whom decided and date of decision.	Further order of the High Court, if any, and date.	Date of transfer of record to Dattar.	Signature of Dattardar and date.	Remarks.

The rules relating to the preparation of the Sessions Judges' Monthly Criminal Returns are to be held applicable to cols. 1 to 16 of the Register and to the column of Remarks. The cols. 17, 18 and 19 explain themselves.

FORM L.

Register of Criminal Appeals disposed of by the Sessions Judge of

No. of appeal.	1	Name and caste of appellant.	2	Crime.	3	Sentence or order of Magistrate or Assistant Sessions Judge.	4	Date of presentation of Appeal.	5	Date of receipt of record.	6	Date of further hearing.	7	Final order of Sessions Court.	8	Date of final order of Sessions Court.	9	Further order, if any, of High Court, and date.	10	Papers sent to Dattar.	11	Dattardar's signature.	12	Remarks.	13

The appeals in this Register are to be numbered consecutively throughout the year.

FORM-M.

Register of Miscellaneous Criminal Applications.

No. of application.	Name and caste of applicant.	Nature of application.	Date of call for record.	Date of receipt of record.	Date of further hearing.	Effect of final order.	Date of final order.	Papers returned or sent to Dastardar.	Dastardar's signature.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

The applications are to be numbered consecutively throughout the year.

iii. A Register of convicts' petitions shall be kept by Jailors in the form N. subjoined :—

FORM N.

REGISTER OF CONVICTS' PETITIONS,

(To be filled in by the Jailor.)

No. OF 19 .

*Register of Petitions presented by Convicts in the
Judicature at Bombay.*

Jail to the High Court of

No.	Date of petition.	No. of case in Sessions Judge's calendar.	Name.	Crime.	Plea before the Sessions Judge.	Sentence and date.	Sentence by whom and where passed.	Opinion of the Assessors or verdict of Jury.	Whether the case has been previously brought to the notice of the High Court, and whether the former petition was rejected.
1	2	8	4	5	6	7	8	9	10

Countersigned,

C. D.

Superintendent.

(Signed) A. B.,
Jailor.

CHAPTER XIII.

FORMS.

I.

WARRANT TO SECURE ATTENDANCE OF A WITNESS REFUSING OR NEGLECTING TO OBEY A SUMMONS SERVED UPON HIM.—SECTION 90.

To _____

Whereas the evidence of A.B., of _____, is necessary in the case of _____, charged with the offence of _____, and whereas the said A.B. has disobeyed a Summons duly served upon him directing his attendance: You are hereby required to apprehend the said A.B. and produce him before me.

Dated this _____

day of _____

19____



(Signature.) _____

II.

SUMMONS TO PRODUCE A DOCUMENT.—SECTION 94.

Whereas complaint has been made before me that _____ of _____ has (or is suspected to have) committed the offence of (state the offence), and it appears to me desirable for the purposes of the enquiry that the following document, viz., _____ shall be produced before me:

You are hereby summoned to attend and produce, or to cause to be produced, the said document, before this Court on the _____

day of _____ next at ten o'clock in the
forenoon. Herein fail not.

Given under my hand and the Seal of the Court, this
day of _____ 19 .



(Signature.)

III.

ORDER FOR DISTRESS AND SALE OF PROPERTY OF COMPLAINANT WHEN COMPENSATION IS NOT PAID.—SECTION 259.

To

The POLICE OFFICER in charge Police Station at

Whereas it has been awarded that A.B., of
pay to _____, of _____ a sum of (*figures and letters*)
Rupees as compensation for having brought a frivolous (*or vexa-*
tious) complaint against him; and whereas the said A.B. has failed
to pay the said sum: You are hereby required to attach the
moveable property of the said A.B., in the _____ of
_____, and (unless the aforesaid amount be sooner paid),
having given three days' previous notice to sell the property so
attached, or so much of it as may be required to realize the sum
aforesaid, and to produce this sum before me in execution of this
order within _____ days of this date.

Given under my hand and the Seal of the Court, this
day of _____ 19 .



(Signature.)

IV.

WARRANT OF COMMITMENT PENDING TRIAL BY THE
COURT OF SESSION.—SECTION 220.

To

The JAILOR of the Jail at

Whereas charged with
punishable under Section of the Indian Penal
Code has been committed for trial before the Court of Session;

This is to authorize and require you the said Jailer to receive
this said (*prisoner's name*) into your custody in the said Jail,
together with this Warrant, and there keep him until you receive
the order of the said Court of Session to produce him.

Given under my hand and the Seal of the Court, this
day of 19 .



(Signature.)

N. B. The prisoner was arrested on the

day of 19 .

V.

ORDER TO JAILOR FOR PRODUCTION OF ACCUSED PERSON ON
COMMITTAL FOR TRIAL BEFORE COURT OF SESSIONS.

To

THE JAILOR of the District Jail at

You are hereby required to produce before me at A.M.
on the day of 19 the accused who
has been committed for trial, and whom you hold in custody on

a Warrant directed to you by
Magistrate in this District.

Esq., a

Given under my hand and the Seal of the Court, this
day of 19 .



(Signature.)

VI.

**WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISON-
MENT IF PASSED BY A COURT OF SESSION.—SECTION 309.**

To

The JAILOR of the District Jail at

Whereas at a Court of Session held at (*name of place and District*) before (*name*) Sessions Judge the prisoner (*name*) was convicted of the offence of (*mention the offence or offences concisely*) under Section (*or Sections*) of the Indian Penal Code (*or of Act*) and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you, the said Jailer, to receive the said (*prisoner's name*) into your custody in the said Jail, together with this Warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the Seal of the Court, this
day of 19 .



(Signature.)

VII.

WARRANT ON REMAND—SECTION 344.

To

CONSTABLE of the Police and to the JAILOR
of the Jail at (or the KEEPER of the Lock-up at
).

Whereas _____ of _____ is charged
before me with _____ and it has been deemed
necessary to adjourn the inquiry into the said charge till
_____ day the _____ day of _____

19 ;

You are, and each of you is, hereby required to receive the said _____ into your custody and to produce him before me at [name the place]

at A.M.,* on the aforesaid day.

Given under my hand and seal of office this
day of 19 .

* Detention beyond the time thus specified is illegal, and the Magistrate, Jailor and Police Officer should conduct themselves accordingly.

Seal.

(Signature.)

VIII.

WARRANT TO BE USED WHEN, THE ACCUSED BEING IN CUSTODY, THE MAGISTRATE STAYS PROCEEDING UNDER SECTION 346.

T₀

CONSTABLE of the
the JAILOR of the Jail at
ER of the Lock-up at

Police and to
(or the KEEP-

)

Whereas _____ of _____
is charged before me with _____
and the evidence appearing to warrant a presumption that the
case is one which should be tried or committed for trial by some
other Magistrate in this District, the proceedings have been
stayed and the case submitted to the District Magistrate (or as
the case may be).

You are, and each of you is, hereby required to receive the
said _____ into your custody, and
produce him when called upon before the District Magistrate, or
such other Magistrate at such place and time as the District
Magistrate shall direct or in the absence of direction from the
District Magistrate to produce him before me at _____ of
_____ on the day of _____ 19 _____ at _____ M.

Given under my hand and seal of office this
day of _____ 19 .



(Signature.)

A note of the warrant or a copy to be sent with the reference to the Magistrate
to whom the reference is made.

IX.

**CERTIFICATE TO BE ATTACHED TO THE EXAMINATION OF AN
ACCUSED PERSON.—SECTION 364.**

Certified that the above examination of the accused *A.B.* has
been taken in my presence and in my hearing, and contains a full
and true account of the statement made by him.

Dated this _____ day of _____ 19 _____



(Signature.)

X.

WRIT TO JAILOR WHEN AN APPEAL HAS BEEN REJECTED
UNDER SECTION 421.

In the Court of

of

To

The JAILOR of the Jail at

Upon reading the Petition of Appeal of
a Convict in the Criminal Jail at

who

19

by

convicted under date the
Esquire,

Magistrate

the

District of

of

offence under Section

of the Indian Penal Code,

and sentenced to

and upon reading the copy of the Sentence appealed against, and
upon hearing Mr.

Pleader for the Appellant, it is ordered that the Petition of Appeal
of the said be rejected.

And you are hereby required to communicate this order to
the aforesaid Appellant
and to attach this Writ to the Warrant under which you hold the
said
in your custody.

Given under my hand and the Seal of the Court, this
day of

19



(Signature.)

XI.

NOTICE TO APPELLANT THROUGH SUPERINTENDENT OF JAIL OF HEARING OF HIS APPEAL.—SECTION 422.

No of 19

In the Court of of

To

The SUPERINTENDENT of the Jail at

Sir,

With reference to a Petition of Appeal from
dated the

I have the honour to request you will be good enough to inform the Convict that this Court will hear the said appeal on or after the

2. You are also requested to return this letter with a memorandum of your having communicated the order to the Convict.

I have the honour to be,

Sir,

Your most obedient Servant

XIII.

FORM OF WRIT TO MAGISTRATE, CALLING FOR RECORD
AND PROCEEDINGS.—SECTION 421, 423, OR 435.

In the Court of _____ of _____

To _____

Esquire,
Magistrate the District of _____

You are hereby required to certify to this Court all the
Records and Proceedings in the case of _____ convicted under Section
of the Indian Penal Code and sentenced to _____ by
Esquire, Magistrate of
District of _____ on the _____ of _____ 19 _____, and
to return this Writ duly executed within three days after its
receipt.

Given under my hand and the Seal of the Court, this
day of _____ 19 _____.



(Signature.)

The following to be printed on the back of this writ:—

No. _____ of 19 _____.

I hereby certify to the Court of _____ the Records
and Proceedings in the within-mentioned case as required by this
Writ, which was received by me on the _____ of
19 _____.

Given under my hand and the Seal of the Court, this
day of _____ 19 _____.



(Signature.)

XIV.

**WRIT TO JAILOR WHEN AN APPEAL HAS BEEN DISMISSED OR
SENTENCE ALTERED UNDER SECTION 423.**

In the Court of

of

In the matter of Criminal Appeal No. of
19 , brought by
who convicted on before
Esquire, Magistrate the District of
of offence punishable under Section of the
Indian Penal Code, and sentenced to

To

The JAILOR of the Jail at

Upon perusing the proceedings of the Lower Court, and upon
hearing Mr. , Pleader for the Appellant,
and the Public Prosecutor, it is ordered that

And you are hereby required to communicate this order to
the aforesaid Appellant,
and to attach this Writ to the Warrant under which you hold the
said in your
custody.

Given under my hand and the Seal of the Court, this
day of 19



(Signature.)

XV.

WRIT TO JAILOR WHEN SENTENCE HAS BEEN REVERSED ON
APPEAL.—SECTION 423.

In the Court of

of

In the matter of Criminal Appeal No.

of 19 brought by

who convicted on the

of

19 before

Esquire,

Magistrate of

the District of

able under Section

of an offence punish-
of the Indian Penal Code, and

sentenced to

To

The JAILOR of the Jail at

Upon perusing the proceedings of the Lower Court, and upon
hearing Mr.

Pleader for the Appellant, and

the Public Prosecutor, it is ordered that the sentence passed by
the said Magistrate upon the said

Appellant, be reversed.

And you are hereby required to carry out the said order by
discharging the said

Convict now in your custody, and to certify execution of the said
order by endorsement at the foot of this Writ, within two days of
your receipt hereof.

Given under my hand and the Seal of the Court, this
day of

19

Seal.

(Signature.)

This day of 19 .

Jailor.

XVI.

To the JAILOR of the District Jail at

made an Appeal to this Court and the said (name) was, pending the disposal of the Appeal, released on bail on the _____ of _____ 19____, by order of this Court, and whereas this Court has this day (dismissed the Appeal or reduced or altered sentence to _____)

As the case
may be.

), the said Convict (name) being present in Court has this day been re-arrested and forwarded to the Criminal Jail at

As the case
may be.

to undergo the remaining portion of the sentence (or the new sentence passed in appeal).

This is to authorize and require you the said Jailor to receive the said (*name*) into your custody in the said Jail, together with this warrant and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court this
day of 19 .



(*Signature.*)

XVII.

WRIT TO JAILOR WHEN THE HIGH COURT HAS REJECTED OR DISMISSED AN APPEAL OR APPLICATION FOR REVISION OR WHEN A SENTENCE HAS BEEN ALTERED BY THE HIGH COURT ON APPEAL OR IN EXERCISE OF ITS JURISDICTION AS A COURT OF REVISION.—
Section 425 AND SECTION 442.

In the Court of

To

The JAILOR of the Jail at

Whereas (*name*) a Convict in the Criminal Jail at who was convicted by this Court on the of 19 , of an offence punishable under Section of the Indian Penal Code (or *Act*), and was sentenced to , made an Appeal (or application for revision) to the High Court of Judicature at Bombay; and whereas the said High Court has ordered that , as signified to this Court by High Court Writ No. dated the of 19

You are hereby required to communicate this order to the said (*name*) and to attach this Writ to the Warrant under which you hold the (*name*) in your custody.

Given under my hand and the Seal of the Court, this
day of 19 .



(*Signature.*)

XVIII.

WRIT TO JAILOR WHEN SENTENCE HAS BEEN REVERSED BY THE
HIGH COURT ON APPEAL OR IN THE EXERCISE OF ITS JURIS-
DICTION AS A COURT OF REVISION.—SECTION 425 AND SECTION
442.

In the Court of

To the JAILOR of the Jail at

Whereas the High Court of Judicature at Bombay has re-
versed the sentence of passed on the

day of 19 by this Court under Section of the
Indian Penal Code on (*name*) at present a Convict in the said
Jail, and has ordered that the said (*name*) be discharged, as
signified to this Court by High Court Writ No. dated the

of 19 ; you are hereby required to carry into
execution the said order by discharging the said

, and to certify execution of the said order by endorsement
at the foot of this Writ within two days of your receipt hereof.

Given under my hand and the Seal of the Court, this
day of 19 .



(*Signature.*)

RETURN.

It is hereby certified to the _____ that
the within-mentioned Convict has this day been discharged in
execution of the above order.

This _____ day of _____ 19 .

Jailor.

 XIX.

FORM OF WRIT TO MAGISTRATE DIRECTING FURTHER
ENQUIRY UNDER SECTION 428.

In the Court of

Criminal Appeal No. _____ of 19 .

To _____ Esquire.

Upon reading your Return No. _____, dated the
of _____ 19 , to this Court's Writ No. _____, dated
the _____ of _____ 19 , certifying the Record and Proceed-
ings in the case of _____ convicted by _____, Esquire,
on the _____ day of _____ 19 , of an offence punish-
able under Section _____ of the Indian Penal Code (or Act _____);
and upon reading the said Record and Proceedings, and after
hearing Mr. _____ Pleader for the Appellant
and _____; It is ordered
that _____ do make the further inquiry
and take the additional evidence indicated in the accompanying
copy of this Court's Minute dated the _____ of _____ 19 .

And you are hereby required to carry out the said order, and
to certify to this Court the Record of such additional evidence,
and the result of such further inquiry on or before the _____ of
19 ; to which day the further hearing of the Appeal

stands adjourned, retransmitting to this Court at the same time the Record and Proceedings at the original trial, which are herewith returned.

Given under my hand and the Seal of the Court, this
day of 19 .



(Signature.)

XX.

PROCLAMATION RELATING TO UNCLAIMED PROPERTY TO BE
ISSUED UNDER SECTION 523.
PROCLAMATION.

Proclamation is hereby made that (*such and such property*) has been seized, under the provisions of Section of the Code of Criminal Procedure, at the house of (*or in such a place*), in the street of in the village (or town) of , and is now lying at (*such and such a place*), in charge of (*such and such an officer*): Any person having a claim to the aforesaid property is hereby required to appear before me, and establish the same within six months of this date, failing which the said property will be held at the disposal of Government, and will be sold.

Dated day of 19

(Signature.)

IN THE COURT OF

(Vide *Government Gazette*, for 1890, Part I, p. 980.)

XVII.

FORM OF BOND.

17

trol by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property within such time and to such person as shall be demanded by the person at the head of the office to which I belong such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of Rupees Two Hundred.

Dated

(Signature.)

XXIII.

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

We

hereby declare ourselves sureties for the abovesaid

that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council such sum not exceeding Rs. 200, as shall be deemed sufficient by the

to cover any loss or damage which the Government may sustain by reason of such default.

Dated

(Signature.)

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